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SUPREME COURT, U. S.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1964

## No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR, APPELLANT,

*vs.*

VIOLA STERGIOS, ETC.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA

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[fol. 1]

# IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

No. 83325 Equity

STANLEY M. CORBETT, Guardian of the Property of CONSTANTINE NEONAKIS, a Minor, Plaintiff,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS, Defendant.

[fol. 3] On about the 15th day of March 1961, the plaintiff-appellant filed with the Clerk of the District Court his Petition. Portions thereof were stricken by order of Court dated April 3, 1961, sustaining part of the Motion to Strike and Make More Specific of defendant. By order of same date plaintiff was required to make his Petition more specific, to which plaintiff complied by amendment to his Petition dated the 10th day of May, 1961. Plaintiff's Petition as amended and as stricken is as follows:

AMENDED PETITION—May 10, 1961

Comes Now the plaintiff and for cause of action against the defendant states and alleges as follows:

I.

That plaintiff is the duly appointed guardian of the property of Constantine Neonakis, a minor. That said minor is presently residing in Heraklion, Crete, Kingdom of Greece.

II.

That defendant is a resident of Sioux City, Woodbury County, Iowa, and is the widow of Nick Stergios, a/k/a [fol. 4] Nicholas Steryiakis, a/k/a Nicholas Stergios, deceased.

III.

That on or about the 20th day of October, 1954, said Nick Stergios executed a will, a copy of which is attached hereto, marked Exhibit "A", and by this reference made a part hereof the same as if pled in full.

IV.

That the deceased Nick Stergios, a/k/a Nicholas Stergios, a/k/a Nicholas Steryiakis, did petition to adopt plaintiff's ward, Constantine Neonakis, and that by virtue of decree Number 123/1958, dated the 22nd day of February, 1958, of the Court of First Instance of Heraklion, Island of Crete, Kingdom of Greece, a copy of which is attached hereto, marked Exhibit "B", and by this reference made a part hereof, the same as if pled in full, said Constantine Neonakis was pronounced the adoptive child of Nicholas Steryiakis, a/k/a Nick Stergios, a/k/a Nicholas Stergios.

V.

Chapter 13, Articles 1632 through 1652 provide that per-
[fol. 5] sons who have no issue, who are over fifty years of age, and who are legally competent, may adopt another person as his child. That said Articles provide that persons cannot adopt their own children born out of wedlock. The adopting parent cannot adopt another child while his adopted child is living. A guardian cannot adopt his ward before he has rendered a final account. A married person cannot adopt or be adopted without the consent of the spouse given in writing before a Notary Public or by a declaration before the Court at the time of adoption. The consent is not required if, because of incompetency of the spouse or for other reason, it is not obtainable. The age of the adopting parent must exceed that of the adopted child by at least eighteen years. The consent of the adoptive child is required for adoption. If the adopted child is a minor, the consent of his parents is required in Court, or that of one of them, if the consent of the other is unob-

tainable. After investigation the Court may permit the adoption if the requirements of the law are met and if the Court finds that the adoption is for the best interests of the adoptive child. From the date of the adoption, the adopted child stands in the place of a genuine child of the [fol. 6] adoptive parent. The adoptive parent does not have any inheritance rights over the adoptive child. The adoption by both spouses has the effect that the adopted child is the genuine child of both of them. The relationship rights and obligations of the adoptive child and his natural family remains unchanged. The obligation of the adoptive parent to support the child precedes the obligation of his blood relatives. The adoption may be dissolved by Court Decree by Petition of the adoptive parent or by the adopted child if misconduct is shown which justifies disinheritance, or by marriage between the adoptive parent and the adopted child.

With reference to persons residing in Sioux City, Woodbury County, Iowa, the Greek Consular official may be designated "rapporteur", or officer of the Court, for the purpose of obtaining the consent to the adoption by the adopting parent and by his spouse, pursuant to Article 145 of the Greek Rules of Civil Procedure.

VI.

That the minor, Constantine Neonakis, was the son of Constantine Neonakis, who died in the year 1955, and of [fol. 7] Penelope Neonakis. That at the time of the adoption the only parent of the minor, Constantine Neonakis, was his mother, Penelope Neonakis, domiciled in Kamarae, Pyrgiotissa, in the Department of Heraklion, Island of Crete, Kingdom of Greece; that said Penelope Neonakis consented to the adoption; that the minor Constantine Neonakis was three years of age at the time of said adoption; that the adopting parents were at the time of adoption over fifty years of age and more than 18 years older than the adopted child and had no issue.

VII.

That the deceased Nick Stergios, a/k/a Nicholas Stergios, a/k/a Nicholas Steryiakis, and his spouse, the defendant Viola Stergios appeared before a Greek Consular official in Chicago, Illinois and granted their consent to the adoption.

VIII.

That on or about August 20, 1958, the said Nick Stergios died, testate, in Woodbury County, Iowa, leaving his said spouse, the defendant, surviving him. That the will referred to in Paragraph III of this petition was admitted to pro- [fol. 8] bate; that George D. Pappas was appointed executor of the estate. That no notice of any of the probate proceedings was given to the minor, Constantine Neonakis, although his existence, status and address was known to the defendant and the said executor, and that no guardian ad litem was appointed to represent the minor's interests. That the Final Report in the Matter of the Estate of Nick Stergios, Probate No. 22041, in the District Court of Iowa, in and for Woodbury County was approved on the 26th day of March, 1959.

IX.

That the executor of said estate, George D. Pappas, has since become deceased.

XI.

That the probate inventory in said estate listed the following property as being the assets of said estate:

Lots 23, 24, 25, 26, 27, 28, 29, 30, and 41 of Kendon Addition, an addition to Sioux City, Woodbury County, Iowa.

Lots 262, 263, 264 of Kendon Addition, an addition to [fol. 9] Sioux City, Woodbury County, Iowa.

N. 59′ of Lot 21 in Block 47, Central Sioux City.

S. 36′ of Lot 21 in Block 47, Central Sioux City.

S. 36′ of Lot 22 in Block 47, Central Sioux City.

N. 55′ of S. 91′ of Lot 21, in Block 47, Central Sioux City.

Lot 22 less the S. 36′ of said lot in Block 47, Central Sioux City, and the N. 90′ W½ of Lot 23 in Block 47, Central Sioux City and the North 46.5′ of E½ of Lot 23 in Block 47, Central Sioux City.

S. 72′ of E½ of Lot 18, Block 48, Central Sioux City.

N. 46.5′ of Lot 24 in Block 47, Central Sioux City.

Equipment of the Cretion Club of $1,000 value.

Equipment of Nicks Drive Inn of $3,000 value.

[fol. 10] One 1948 Pontiac automobile.

XIII.

That the minor, Constantine Neonakis did not benefit from the will of said deceased adopting parent, nor has said minor received his intestate share of said estate.

Wherefore, plaintiff demands that the Estate of Nicholas Stergios be reopened, that the order approving the final report be set aside and rescinded, that an Administrator de bonis non be appointed to administer said estate, that should any of the assets of said estate have been conveyed to parties other than beneficiaries of said will, that said conveyances be set aside, or in lieu thereof the proceeds in consideration of said conveyances be traced and deemed to be part of said estate, that plaintiff have and recover two-thirds of the value of assets of said estate, and that plaintiff be given such other equitable remedies and relief as the court may deem fit and proper.

[fol. 11]

IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

NOTICE TO ADMIT—Filed May 10, 1961

I

Comes Now the plaintiff and requests the defendant to admit the truth of the following matters of fact:

1. All of the facts stated in Paragraph I of plaintiff's Petition.

2. All of the facts stated in Paragraph IV, as amended, of plaintiff's Petition.

3. All of the matters set forth in Paragraph V, as amended, of plaintiff's Petition.

4. All of the matters set forth in Paragraph VI of plaintiff's Petition.

5. All of the matters set forth in Paragraph VII of plaintiff's Petition.

II

Comes Now the plaintiff and requests the defendant to admit the genuineness of the following documents:

1. That Exhibit "B", attached to plaintiff's Petition and made a part thereof, represents a true and correct copy of Decree Number 123/1958, dated the 22nd day of [fol. 12] February, 1958, of the Court of First Instance of Heraklion, Island of Crete, Kingdom of Greece.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

OBJECTIONS TO REQUESTS FOR ADMISSIONS—
Filed May 19, 1961

Defendant objects to the following requests for admissions because:

1. Request 1 of Paragraph 1 asks an answer beyond defendant's personal knowledge in violation of R.C.P. 127.

2. Request 2 of Paragraph 1 in that it asks for an answer beyond defendant's personal knowledge in violation of R.C.P. 127 except in so far as it refers to a petition for adoption which is objectionable in that it calls not for the admission of facts, but conclusions of law of which the defendant is not able to give an opinion.

3. Request 3 of Paragraph 1 asks an answer beyond defendant's personal knowledge in violation of R.C.P. 127 in that defendant does not have personal knowledge of the Greek law.

4. Request 4 of Paragraph 1 asks an answer beyond [fol. 13] defendant's personal knowledge in violation of R.C.P. 127, except so far as it refers to the age of Nick Stergios, defendant states that Nick Stergios was more than 50 years of age at all times material in this action and that the defendant is not as yet 50 years of age.

5. Request 5 of Paragraph 1 in so far as it asks whether the defendant consented to the adoption in that it involves conclusions including opinions of law and inferences as to results of acts of other persons which defendant cannot be properly required to give.

6. Request 1 of Paragraph 2 asks an answer beyond defendant's personal knowledge and involves a document of record which the defendant does not know if it is a proper record.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

ANSWER—Filed September 29, 1961

Comes Now the defendant and in answer to plaintiff's Petition states:

1. Defendant denies Paragraph 1 of plaintiff's Petition for lack of information and belief.

2. Defendant admits that part of Paragraph 2 of plain-
[fol. 14] tiff's Petition which was not stricken by defendant's Motion to Strike which the Court sustained.

3. Defendant admits that portion of Paragraph 3 of plaintiff's Petition which was not stricken under defendant's Motion to Strike which the Court sustained.

4. Defendant denies Paragraph 4 of plaintiff's Petition.

5. Defendant denies Paragraph 5 of plaintiff's Petition for lack of information and belief.

6. Defendant denies Paragraph 6 of plaintiff's Petition except in so far as it intends to imply that Nicholas Stergios was more than 50 years of age.

7. Defendant denies Paragraph 7 of plaintiff's Petition.

8. Defendant admits the following of Paragraph 8 of plaintiff's Petition: "That on or about August 20, 1958, the said Nick Stergios died, testate, in Woodbury County, Iowa, leaving his said spouse, the defendant, surviving him. That the will referred to in Paragraph 3 of this Petition was admitted to probate; that George D. Pappas was appointed executor of the estate . . . " "That the Final Report in the Matter of the Estate of Nick Stergios, Probate No. 22041, in the District Court of Iowa, in and for Woodbury County [fol. 15] was approved on the 26th day of March, 1959." The remainder of Paragraph 8 the defendant denies.

9. Defendant admits Paragraph 9 of plaintiff's Petition.

10. Paragraph 10 of plaintiff's Petition has been stricken by the defendant and so the defendant does not answer the same.

11. Defendant admits Paragraph 11 of plaintiff's Petition.

12. Defendant denies for lack of information and belief Paragraph 12 of plaintiff's Petition as stricken on Court's sustaining defendant's Motion to Strike.

Wherefore, Defendant asks that the Estate of Nick Stergios not be reopened, that the order approving the final report not be set aside, that an Administrator de bonis non not be appointed to administer the said estate, and

that the plaintiff not be permitted to recover two-thirds of the assets of said estate and that the plaintiff not be given any equitable remedies and relief.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

TRANSCRIPT OF HEARING—July 6, 1962

On the 6th day of July, 1962, this cause came on for trial before the Honorable Lawrence W. McCormick, Dis-[fol. 16] trict Judge, Fourth Judicial District of Iowa, the plaintiff appearing by his attorneys, Robert R. Eidsmoe and Allen J. Carew of the firm of Gleysteen, Nelson, Harper, Kunze & Eidsmoe, and the defendant appearing by her attorneys, Phillip S. Dandos and H. A. McQueen of the firm of McQueen, Forker & Dandos, and on said trial the following proceedings were had:

PLAINTIFF'S TESTIMONY

STIPULATION RE PLAINTIFF'S EXHIBIT No. 1

It was stipulated by and between the parties that plaintiff's Exhibit Number 1, the Court file in No. 22041 Probate, the Estate of Nick Stergios may be admitted in evidence for whatever value it may have.

Before plaintiff's testimony, defendant stated to the court that at this time he raises the legal question as to who is the party in interest in this case and challenges everyone's authority including the guardian and the attorneys. Plaintiff's attorney stated he had no intention of putting Mr. Corbett, the guardian, on the stand and that if Mr. McQueen wants to cross-examine Mr. Corbett, he can call him. Mr. McQueen stated to the court that he wanted a [fol. 17] right to cross-examine the guardian as to the guardianship file and raising specifically the objection as to the right party in this court.

MRS. ELOISE N. ELLIOTT testified on behalf of plaintiff as follows:

She is the deputy clerk of the District Court of Iowa in and for Woodbury County, Iowa, and has held that position since May 6, 1960, and is the custodian of file No. 23388 Probate, Woodbury County, Iowa, the guardianship of Constantine Neonakis, which is shown on Docket 73, page 217. Plaintiff offered file No. 23388 into evidence as plaintiff's Exhibit Number 2. Defendant objected on the ground that no proper foundation had been laid, no identification of the parties therein, no opportunity having been given to defendant to cross examine the guardian as to the contents thereof, no showing the same is correct or has any bearing on the issues in the case. Defendant reserves further objection until after cross examination. The objection was overruled and Probate file No. 23388, plaintiff's Exhibit Number 2 was admitted in evidence for the second time.

[fol. 18] Cross examination.

The record says Stanley M. Corbett has entered into the required bond and has taken the oath prescribed by law. The bond is not in the file. The bond is in the vault. I would have to look at the docket to determine if there is a bond on file in the case. There is nothing in the file to show that there is a bond other than that one statement. The bond is not kept in the ordinary file. I can't say that there is a bond until I examine the record in the office. I have no further knowledge as to the contents other than what is in the file.

Defendant objects to the admission of plaintiff's Exhibit Number 2 for the reasons heretofore urged that the file is not complete. The objection was overruled and Exhibit Number 2 was admitted in evidence.

Redirect examination.

I checked the index to determine whether or not any guardianship has been obtained for the same Constantine Neonakis on any previous occasion. I checked the index

file this morning and didn't find any other guardianship under the name of Constantine Neonakis.

The witness was then excused. Counsel for defendant [fol. 19] then requested the Court to have the guardian present for the purpose of cross-examination to lay further foundation for objection to plaintiff's Exhibit "1", and to challenge the capacity of Stanley M. Corbett to act as guardian and of the attorneys for the guardian to represent the guardian. The Court overruled the request for the reason that Stanley M. Corbett was available to be subpoenaed by defendant, and that the guardianship file, plaintiff's Exhibit "2", shows that Stanley M. Corbett was appointed guardian and the Court will presume the legality of the appointment until shown otherwise.

OFFER AND ADMISSION OF PLAINTIFF'S EXHIBIT "3"

Mr. Eidsmoe: At this time plaintiff offers into evidence Plaintiff's Exhibit "3" and which is a Decree of the Court and is being offered pursuant to Sec. 622.55 of the Code of Iowa.

The Court: Is there any objection?

Mr. McQueen: At this time counsel objects to the introduction of Exhibit "3" for the reasons:

[fol. 20] 1. No proper identification; no identification of the parties; that the same is not a legal testation, exemplification.

2. For the further reason that there is no sufficient testation of the clerk or officer in whose custody such records are legally kept.

3. For the further reason no identification of the Clerk or the Judge; no official certificate of any known authorized official by virtue of their said office for the purpose of identification of a foreign decree.

4. For the further reason that the identification of the Court of a foreign government alleged, fails to show the authority of the Court attested by seal; no showing of its jurisdiction, and no showing of the seal of the Court.

5. And for the further reason that the Exhibit "3" in itself appears to be a decree of unknown proceedings and is not self-explanatory and is not in the nature of a judgment or decree as required by law.

6. And for the further reason that there is no identification of the translator; that the same is not the original; there is no showing that it is a true copy and no showing that it has been fully translated and correctly translated; there is no showing of the qualification of the translator; [fol. 21] that the same is hearsay, and that no foundation has been laid, and does not comply with the provisions of the Iowa law.

The Court: Well, the Court will reserve ruling on the objection to study on this before I will be prepared to rule on it.

Mr. Eidsmoe: Exhibit "3", it is the plaintiff's purpose to introduce Exhibit "3" according to Sec. 622.57 of the Iowa Code.

Mr. McQueen: I move to strike the offer as being immaterial and object on the following particular as being incompetent, irrelevant and immaterial, having no bearing and no proper foundation has been laid, or any materiality shown of an executive act, no proper foundation laid showing it was an executive act, and I might mention to the Court the original offer was a judicial decree.

Ruling was reserved until after a recess at which time the objection was overruled and Exhibit "3" was admitted into evidence.

[fol. 22]

OFFER AND ADMISSION OF PLAINTIFF'S EXHIBIT "4"

Plaintiff's Exhibit "4" being a certified copy of the Greek Civil Code on adoption was offered into evidence pursuant to stipulation entered into between the parties at pre-trial conference and was admitted in evidence.

MR. JOHN D. DRITSAS testified on behalf of plaintiff as follows:

Mr. Eidsmoe: At this time, your Honor, the plaintiff's Exhibit "4", what has been marked plaintiff's Exhibit "4", is offered into evidence; said document also contains markings "Ex. "MR-1", and said exhibit being offered pursuant to the stipulation contained at the pretrial conference.

Mr. McQueen: It is so agreed, your Honor. That is the one agreed.

The Court: There is no objection?

Mr. McQueen: There is no objection as to its admission.

The Court: Exhibit "4" is admitted in evidence.

[fol. 23] Mr. Eidsmoe: At this time, your Honor, plaintiff would like to introduce the deposition of John D. Dritsas.

Mr. Eidsmoe: Deposition of John D. Dritsas taken at 7726 South Shore Drive, Chicago, Illinois, on the 17th day of July, 1961 commencing at 10:00 a.m. on behalf of the plaintiff, pursuant to the stipulation thereto attached. The witness, John D. Dritsas, was first sworn to tell the truth, the whole truth, and nothing but the truth in answering the Interrogatories and Cross-Interrogatories propounded to him, and thereupon made answers as follows, no one being present at the time except said witness and the Commissioner.

Interrogatory No.

1. State your name.
A. John D. Dritsas.

2. State your present address.
A. 622 Signal Hill Road, Barrington, Ill.

3. Where were you born?
A. In Nauplia, Greece.

4. When were you born?
A. February 10, 1878.

5. What professional training have you had?
A. I was graduated from the law school of the National [fol. 24] University of Greece and practiced law before the Greek Courts in Athens, Greece.

7. Are you a member of any professional associations in the Kingdom of Greece?

A. I was a member of the Bar of Athens, Greece until I left Greece.

8. Did your training make you thoroughly familiar with Greek law, and particularly the Greek law of the adoption of children?

A. Yes.

9. Are you a member of any professional associations in the United States?

A. I was a member of the Illinois State Bar Association until the time of my retirement.

10. To which professional associations do you belong?

A. To none now.

11. Have you been engaged in the practice of law in the United States?

A. Yes.

12. Where were you engaged in the practice of law?

A. In Chicago, Illinois.

13. What type of legal practice did you carry on?

A. I was, for about 37 years, Counselor to the Consulate [fol. 25] General of Greece at Chicago, handling every legal matter requiring knowledge of American and Greek law.

14. Has this practice required you to maintain your familiarity with the laws of Greece, including the Greek law of the adoption of minors?

A. Yes.

15. Which Chapter and Articles of the Greek Code sets forth the Greek law of adoption?

A. Chapter 13 of the Greek Civil Code, Articles 1632 to 1652, inclusive.

16. Under the laws of Greece, who may legally adopt another person?

A. Any legally competent person more than 50 years old, who has no issue of his body, may adopt a person at least 18 years younger than himself.

17. Can a person adopt his own children born out of wedlock under Greek law?

A. No.

18. May an adopting parent adopt another child while his adopted child is living under Greek law?

A. No. However, by the same proceedings he may simultaneously adopt more than one child.

19. When a married person adopts another, must the [fol. 26] spouse of the adopting party consent to the adoption under Greek law?

A. Yes.

20. Under Greek law how is that consent given?

A. It may be given by a declaration before the Court at the time of the adoption or in writing before a Notary Public.

21. If the spouse is in a foreign country, is her presence in Greece required to give consent to the adoption?

A. No.

22. How and where may the spouse's consent to the adoption be given under the Greek law?

A. In writing, anywhere, before a Notary Public.

23. Under Greek law may the husband adopt a child without his wife joining in the adoption, providing she gives her consent to it?

A. Yes.

24. If the adopting party is in a country foreign to Greece, must he appear before the Greek Court personally in order to adopt a Greek child living in Greece?

A. No.

25. Where may a resident of a country foreign to Greece appear to give his consent to the adoption of a Greek child residing in Greece?

[fol. 27] A. He must appear before the Consul of Greece commissioned by the preliminary Judgment of the Greek Court, generally before the Consul whose jurisdiction includes his state.

26. What act, or acts, are necessary by an adopting party who is a resident of a country foreign to Greece when he appears before the Greek Consular official for the purpose of granting his consent to the adoption of a Greek child residing in Greece?

A. He must produce a certified copy of the preliminary Judgment of the Greek Court directing the Consul to obtain the consent of the adopting party and he must sign written statement consenting to such adoption.

27. Does the law of Greece provide that the adopting party must be a certain number of years older than the adopted child?

A. Yes. The adopting party must be at least 18 years older than the person to be adopted.

28. If the adopted child has living parents may he be adopted under the laws of Greece?

A. Yes.

29. If the adopted child has living natural parents under Greek law must the living natural parents grant consent [fol. 28] to the adoption?

A. Yes, if the child is a minor; otherwise, no.

30. Under the laws of Greece where do the living parents grant consent to the adoption?

A. Before the Court where the petition for adoption was filed.

31. Under Greek law is it necessary that the minor grant consent to the adoption?

A. Yes, if the minor is more than 14 years of age.

32. How old must the adopted child be before consent must be given?

A. More than 14 years of age.

33. How is the adoption effected under Greek law?

A. The Court, finding that the requirements of the law have been complied with, and, after having investigated the moral and financial status of the adopting parents, is satisfied that the adoption is generally for the best interests

of the child to be adopted, effects the adoption by the Court's Judgment.

34. Which Courts under Greek law have jurisdiction to grant adoption?

A. The Court of First Instance in whose jurisdiction the adopted party resides.

35. From the date of the adoption under Greek law does [fol. 29] the adopted child stand in the same place as the natural child of the adopting party?

A. Yes.

36. Under Greek law does the adopting parent have any inheritance rights over the adopted child?

A. No.

37. Does the adopted child under Greek law take the last name of the adopting party?

A. Yes.

38. Under Greek law does the adopted child have the right to add to this name his own last name?

A. Yes, the adopted child obtaining the name of his adopting parents may add to that name his own last name.

39. Under the laws of Greece who has the obligation of support of the adopted child, the adopting parent or blood relatives?

A. The adopting parents.

40. How may an adoption be dissolved under Greek law?

A. By Court decree.

41. For what causes may an adoption be dissolved under Greek law?

A. If any kind of misconduct is proven justifying dissolution.

42. Have you had occasion to examine a copy of the decision Number 123/1958 of the Court of First Instance of [fol. 30] Heraklion, Island of Crete, Kingdom of Greece?

A. Yes.

43. Does that Court have jurisdiction and authority to appoint the Greek Consul in Chicago, Illinois, United States of America, to act as "rapporteur" to obtain the consent of Nicholas Steryiakis, a/k/a Nick Stergios, to the adoption of Constantine Neonakis?

A. Yes.

45. Have you had occasion to examine and study the Petition of the plaintiff in case Number 83325 Equity pending in the District Court of Iowa, in and for Woodbury County, Iowa, and particularly Paragraph V, thereof, as amended?

A. Yes.

46. Does said Paragraph V of the Petition accurately state the law of Greece for adoption of minors as it existed in February, 1958?

A. Yes.

Q. From the face of the said decision of the Greek Court does it appear that all legal requirements of Greek law have been met in that adoption proceedings?

Mr. McQueen: Object to that for the reason that it is [fol. 31] self-serving, the law itself being the best evidence and it having been introduced, and it is hearsay.

The Court: Overruled.

A. Yes.

Cross Interrogatories

1. When did you first come to the United States?

A. In the year 1905.

2. What periods of time did you reside in the United States?

A. From that year until the present date.

3. What periods did you practice law in Greece?

A. From 1901 to 1905.

4. Have you ever represented the Greek Consul in the United States?

A. Yes.

5. If the answer to Question No. 4 is yes, have you represented or received cases from the Greek Consul or referrals from such Consul contesting wills in the Courts in the United States?

A. Yes.

6. If the answer to No. 5 is yes, have you received any [fol. 32] such referrals from the Greek Consul in Chicago?

A. Yes.

7. Do you maintain in your office in Chicago an up-to-date copy of the Greek Code?

A. Yes.

8. Under Greek law how long must a child live in the home of person petitioning it adoption before it may be adopted?

A. The Greek law does not require residence in the home of the petitioning party prior to the adoption of the child.

9. If the answer to No. 8 is yes, for how long must it live in the home of such person?

A. I have answered this in my answer to No. 8.

10. Under Greek law must the person petitioning to adopt a child see the child before he is adopted?

A. This is not a requirement in adoption proceedings under the Greek law.

11. Under Greek law what persons may adopt a child?

A. Any person qualified to enter into a legal transaction, who has no issue of his body, and who has completed his 50th year of age, may adopt a person as his child.

12. What investigation must be made of the adopting, [fol. 33] parents?

A. The moral and financial status of the adopting parent must be sufficiently investigated to determine whether the adoption is for the best interest of the child.

13. If such an investigation must be made, who must make the investigation?

A. The Court.

14. What are the specific code sections of the Greek Code to which you refer in answering Questions 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30 and what is the specific wording of these sections?

A. My answer to Interrogatory No. 16 is based on Articles 1632 and 1638 of the Civil Code which are as follows:

Article 1632. Whosoever has no issue of his body may, if he has completed his 50th year and is qualified to enter into a legal transaction, adopt a person as his child.

Article 1638. The age of the adopting parent must exceed that of the adopted child by at least 18 years.

My answers to Interrogatories No. 19, 20, and 23 are based on Article 1637 of the Civil Code which is as follows:

Article 1637. A married person cannot adopt or be [fol. 34] adopted without the consent of the spouse given in writing before a Notary Public or by a declaration before the Court at the time of the adoption. The consent is not required if, because of the incompetency of the spouse or for other reason, it is not obtainable.

My answers to Interrogatories No. 21 and 22 are based on the above mentioned Article 1637 which permits the consent to be given before a Notary Public without specifying where.

My answer to Interrogatory No. 26 is based on Article 124 of the Law XNST which is as follows:

Article 124. The Consuls General, Consuls and Vice Consuls execute all requests and orders of the Greek Courts or their State's Attorneys.

My answer to Interrogatory No. 27 is based on Article 1638 of the Civil Code which is as follows:

Article 1638. The age of the adopting parent must exceed that of the adopted child by at least 18 years.

My answer to Interrogatory No. 28 is based on the fact that there is no provision in the Greek law prohibiting adoption of a child whose parents are living.

My answers to Interrogatories No. 29 and 30 are based on Article 1641 of the Civil Code which is as follows:

[fol. 35] Article 1641. The consent of the adoptive child is required for adoption. If he, however, is a minor, the

consent of his parents is required in Court, or that of one of them, if the consent of the other, because of incompetency or other reason, is unobtainable. If he has no parents, the consent of his Guardian in Court is required and the permission of the council of relatives. In every case the adoptive child who has completed his 14th year must be present in person.

I have read the above Interrogatories and Answers, and state that said Answers are true.

/s/ JOHN D. DRITSAS.

The Court: The deposition shows it was taken pursuant to stipulation entered into by and between the attorneys for the parties hereto, and is there any objection to the offer?

Mr. McQueen: None on the part of the defendant, your Honor.

The Court: Then the deposition of John D. Dritsas is admitted in evidence.

[fol. 36]

REQUEST TO TAKE JUDICIAL NOTICE, OFFER AND ADMISSION OF PLAINTIFF'S EXHIBIT "5"

Mr. Eidsmoe: At this time, your Honor, the plaintiff asks the Court to take judicial notice of the Treaty of Friendship, Commerce and Navigation Between the United States of America and Greece entered into force October 14, 1954, the authority for the asking of judicial notice is the case of Allen v. Markham, 156 Federal 2nd, 653, Circuit Court of Appeals for the 9th Circuit (1946), and plaintiff introduces into evidence what has been marked Exhibit "5" pursuant to Sec. 622.57 of the Iowa Code.

Mr. Dandos: Defendant would like to make an objection to Exhibit "5" as submitted by the plaintiff, and objects to its admission in evidence on the ground that there is no proper identification of Exhibit "5"; that there is no showing of relevancy or materiality in this particular matter; that the exhibit itself is purely hearsay and is not a proper statement of what it purports to be.

The Court: Is this exhibit being offered not only to show the law of the United States but also the Greek law?

[fol. 37] Mr. Eidsmoe: Your Honor, I believe that a treaty, a bilateral agreement between two countries and if it is the law of the United States, it is also the law of Greece as long as the treaty remains in effect, and is being offered to show the law of both countries.

The Court reserved ruling until it had an opportunity to study the law and the exhibit and then overruled the objections and admitted plaintiff's Exhibit "5" into evidence. Defendant's counsel then moved to strike plaintiff's Exhibit "5" for the reasons urged at the time it was admitted. The motion was overruled.

### Offer and Admission of Portion of Deposition of Viola Stergios a/k/a Viola Steryiakis

Plaintiff introduced as plaintiff's Exhibit "6" the deposition of Viola Stergios, a/k/a Viola Steryiakis, the defendant, into evidence pursuant to Iowa Rule of Civil Procedure 144 (b). Defendant objected to the offer on the ground that the deposition was a discovery deposition, no cross examination was had, that it could be used only for impeachment purposes.

[fol. 38] The Court: The objections are overruled and Exhibit "6" is admitted in evidence as to the Lines 9 through 13 on Page 12 thereof and as to Page 2 thereof, the stipulation of the parties.

Mr. Eidsmoe: Is it this Court's wish that these questions be read so objection can be made?

The Court: It makes no difference to the Court, whatever you want to do.

Mr. McQueen: May I at this time make the following exceptions to the Court's ruling as counsel is denied the right to object to the questions in the lines dictated into evidence. Counsel is further denied the right of cross examination, and for the further reason that there has been no proper foundation laid for the questions, and that it is hearsay, and for the further reason that the answers were

privileged and under the Dead Man's statute with the personal conversations either directly or otherwise between Viola Stergios and Nick Stergios.

The Court: Those are exceptions, not objections.

[fol. 39] Mr. Eidsmoe: Those are exceptions. I am wondering if I may have the opportunity to have the few questions read so the defendant may have an opportunity to object.

The Court: You may.

DEPOSITION OF VIOLA STERGIOS IN PART

Mr. Eidsmoe: (Reading)

"Q. What was the relationship between your ex-husband, Nick Stergios, and Penelope Neonakis?"

Mr. McQueen: Objected to for the reason that the same is in evidence and already ruled on, and immaterial at this time.

Mr. Eidsmoe: Your Honor, he objected because he didn't have an opportunity to interpose an objection.

Mr. McQueen: If it please the Court, unless counsel, I think, has permission to argue in between or make it in the form of an objection to my objection, rather than in arguments at this time, if I may answer the argument.

The Court: The objection is overruled.

[fol. 40] Mr. McQueen: Now, I object to the question for the reason that it calls for hearsay, no proper foundation laid, leading and suggestive, calling for a conclusion of the witness, no showing if she knows; no showing whether or not this knowledge was her personal knowledge or if she obtained this knowledge from her husband, and if that be true then it would be privileged and is privileged, and for the further reason that if it was a conversation between her husband and herself so far as this knowledge, then she couldn't be forced to answer it because of the Dead Man's statute, the record showing that her husband is dead.

For the further reason that there is no identification as to the party, Nick Stergios, no identification as to Penelope Neonakis.

Mr. Eidsmoe: (Reading)

"A. Penelope was Nick's niece."

The Court: Was the first question answered?

Mr. Eidsmoe: Answer: Niece. "Penelope was Nick's niece."

Mr. McQueen: Objected to for the reason that the ques-
[fol. 41] tion and answer are already in evidence, already ruled upon and offered and accepted.

For the further reason that it is called for hearsay testimony, no showing of the materiality of the question, no proper foundation laid, and no identification, no time and place fixed, and it is improper in form, and for the further reason that it is a question and answer out of Exhibit "6", a discovery deposition.

For the further reason that this does not tend to prove or disprove anything in this case, or has it been or is it offered for the purpose of impeachment.

The Court: If it doesn't tend to prove or disprove anything I don't know why you are making all these objections. Overruled.

"A. Yes."

Plaintiff rests.

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Dandos: At this time the defendant moves for a judgment in her favor at the close of the evidence, on the following grounds:

1: Plaintiff has failed to prove the material allegations [fol. 42] of her petition.

2: Plaintiff has failed to show that said minor is now residing in Heraklion, Crete, Greece, the said minor is residing there or, in fact, that said minor is now in existence or not at any relative time of the date.

3: Plaintiff has failed to make any showing that Exhibit "3" is in fact what it purports to be, and that on its face it appears to be a copy of the minutes of some proceeding.

4: That the plaintiff has failed to produce any evidence in support of Par. 5 of the plaintiff's Petition as to the said minor's father, whether the said minor's father is alive and whether the said minor's mother has at any time consented to the adoption.

5: The plaintiff has failed to produce any evidence that the defendant in this case, Viola Stergios, ever consented to the adoption of the plaintiff's ward by her husband, and that she appeared before a Greek Consular officer in Chicago and consented to the adoption by her husband, as alleged in plaintiff's Petition.

6: That the plaintiff has failed to show that he has sustained his burden of proof as required by Sec. 567.8 of the Code of Iowa, 1962.

7: That the Exhibit "5", which purports to be a Friend-[fol. 43] ship, Commerce and Navigation treaty between the United States and Greece does not fulfill the requirements of Sec. 567.8 of the Code of Iowa, and that it does not establish that the United States citizens have the rights to inherit in Greece under the same terms and conditions as do citizens of Greece as required by this section of the Code.

8: That the law of Iowa and its public policy does not recognize this adoption as a valid adoption under the laws of Iowa, will not give international comity to its decree.

9: That the action, on this evidence, fails to state a completed cause of action, including proof offered thereunder, and is improper in form and is not and could not be res adjudicata in this matter.

The Court: This is an equity matter, so the Court will reserve ruling on this motion for judgment made at the close of the plaintiff's evidence until the conclusion of the trial.

## Defendant's Testimony

Viola Stergios, a/k/a Viola Steryiakis testified as follows:

[fol. 44] My name is Mrs. Viola Stergios and I live at 1818 Terminal Drive. I am a widow. I was married to Nick Stergios in March, 1946. He died on August 20, 1958. We had no children.

Q. At any time during your marriage did you at any time desire to adopt a child?

A. Yes.

Mr. Eidsmoe: That is objected to as incompetent, irrelevant and immaterial to any issues here.

The Court: Ruling reserved. The question has been answered.

A. Yes.

Q. When was that?

A. We started the baby boy here and we adopted the baby boy here.

Mr. McQueen: Move to strike the answer as not responsive.

The Court: Ruling reserved.

We desired to adopt the baby in 1956. Just my husband and I discussed the adoption. My husband and I went to [fol. 45] Chicago to get the child in January or February, 1958. We signed some papers in Chicago. I cannot speak Greek. The papers were signed in the Greek Consulate.

Q. And what was your intention or what was your knowledge, your own personal knowledge, when you signed these papers in regard to an adoption?

Mr. Eidsmoe: We will object to that as being incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness.

The Court: Ruling reserved. You may answer.

A. My thought that I was adopting a baby when I signed the paper. That is what I understood myself.

Nobody talked to me but my husband.

Q. What was your understanding then at that time and place, that you were to get a child?

A. Yes.

Mr. Eidsmoe: We will object as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, and [fol. 46] ask that the objection precede the answer and that the answer be stricken.

The Court: The request that the objection precede the answer is granted, and ruling reserved on the objection.

I was to get the child in Chicago. I thought the baby would live with us.

My husband explained what the signature was for. I was not able to read the document I signed. I signed it because my husband said it was for the baby adopted, and that the baby would come.

Q. Did the baby ever come?

Mr. Eidsmoe: We object as incompetent, irrelevant and immaterial to any issues in this case.

The Court: Ruling reserved. You may answer.

A. No the baby did not.

The only person that ever talked to me about signing the papers was my husband. We had discussed about having the baby live with us prior to going to Chicago. My husband told me we had to go to Chicago to sign the papers [fol. 47] so we could have the baby.

Q. At the time you went to Chicago did you believe that he would come to the United States and your home would be his home?

A. Yes.

Mr. Eidsmoe: We object as incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness and ask that the objection precede the answer and the answer be stricken.

The Court: The request that the objection precede the answer is sustained and the ruling is reserved on the objection.

Q. Did you believe, Mrs. Stergios, at the time you signed the papers in Chicago that you were actually adopting the child at that time or simply that you were agreeing to adopt the child?

Mr. Eidsmoe: We will object to that as being leading and suggestive, calling for an opinion of the witness, being irrelevant, immaterial and incompetent.

The Court: Ruling reserved. You may answer.

[fol. 48] A. I would sign the paper, as I understood, that I was going to be the mother of the child. That is the reason I signed the paper.

Mr. Eidsmoe: Your Honor, I wonder if I might be able to ask a few questions to lay foundation?

The Court: You may, but there is no question here now.

Q. In other words, you wouldn't have signed the papers if you thought you were not going to be the legal mother of the child, is that correct?

A. That's correct.

Mr. Eidsmoe: We object as calling for the opinion of the witness, calling for the conclusion of the witness, leading and suggestive and ask we might be allowed to ask a few questions of the witness in preparation for the objection.

The Court: You may.

Examination.

By Mr. Eidsmoe:

Q. Mrs. Stergios, do you recall having a deposition taken [fol. 49] in our office on March 31, 1962?

A. I remember a little bit about it.

Q. Was your attorney, Phillip Dandos, with you at that time?

A. Yes.

Q. Do you recall being asked the question by Mr. Dandos:

"Q. All papers that were given to you at that time, were they in Greek or English?"

Do you recall being asked that question?

A. I don't understand.

Q. Do you recall that Mr. Dandos asked you the question:

"Q. All papers that were given to you at that time, were they in Greek or English?"

A. You mean in Chicago?

Q. Yes.

A. I don't remember.

Q. Do you recall whether or not Mr. Dandos asked you that question?

A. I don't remember that.

Q. Were the papers that were given to you to sign in Greek or English?

A. I didn't read the paper.

Q. They could have been in the English language?

A. I don't know. I believed in my husband, what he said.

[fol. 50] Mr. Eidsmoe: Your Honor, we object to any further question as asked by plaintiff's counsel for the reason that it is not clear that the papers were in Greek or English. She doesn't recall the language in which they were written, and if it was in English she was in duty bound to read it, and any impression she may have had at the time of the signing the papers were incompetent, irrelevant and immaterial.

The Court: Ruling reserved.

I was 30 years old in January, 1958. I was born on January 13, 1928. Nick was 66 years old when he died. He died August 20, 1958. I am of English-Irish ancestry. I was 18 years old when I married Nick. My mother, father, sisters and brothers are living. I tried to see the child after we went to Chicago in 1958.

Q. Did you ever see—was the child ever brought into your home by any one?

Mr. Eidsmoe: We object as being irrelevant, immaterial and incompetent to any issues in this case.

[fol. 51] The Court: Ruling reserved.

Q. Was the child ever brought into your home?

A. No, I have never seen the child. I don't know whether it is alive or anything.

Mr. Eidsmoe: We object as not being responsive to the question asked, and being a mere volunteer statement.

The Court: Ruling reserved.

I went to the sixth grade in school. I cannot speak or read Greek. My husband took care of all business matters.

Q. And the only thing you knew about the adoption is what he told you?

A. Yes.

Mr. Eidsmoe: We object as leading and suggestive, calling for the opinion of the witness, and ask the objection go before the answer.

The Court: The objection that the objection precede the answer is granted and ruling reserved.

[fol. 52] My husband left a will and had an attorney by the name of George Pappas.

Q. After your husband's death did you ever have any conversation or anything indicating some one in Greece laying claim to your husband's estate?

Mr. Eidsmoe: We will object to that as being irrelevant, immaterial and incompetent, no proper foundation laid and being an opinion and conclusion of the witness.

The Court: Ruling reserved. You may answer.

A. No.

I have never seen what has been marked defendant's Exhibit "8". There are a lot of words on it that I cannot read. I did not talk with Mr. Pappas about the estate very much. I don't recall Mr. Pappas telling me in October, 1958 that the minor Constantine Neonakis was claiming an inheritance. I knew when this suit was commenced that he was making a claim.

Cross-examination.

My husband spoke Greek. When we were in Chicago he [fol. 53] did not explain about what we were signing, just

about adopting the baby, that I would have a baby. He said he and I were going to adopt the baby. Both of us would adopt the baby.

Defendant rests.

DEFENDANT'S MOTION

Mr. McQueen: Defense rests and defense renews all the motions urged and no argument, and specifically renews the motion to dismiss, and for the further reason that the legal issue having been raised, raised as to the capacity of the Guardian and his counsel, and no affirmative showing having been made and no cross examination having been offered.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

AMENDMENT TO ANSWER TO CONFORM TO THE PROOF—
Filed July 11, 1962

Comes Now, the defendant pursuant to Rule 88, Iowa Rules of Civil Procedure Code of Iowa 1962 and asks leave of court to amend its answer hereinbefore filed and amend [fol. 54] it by adding thereto the following:

1. By way of further defense to the petition of the plaintiff herein the evidence herein shows that the defendant did not consent to the adoption of Constantine Neonakis and that the purported adoption decree of the Greek Court in the matter herein is not a valid decree recognizable by this court.

2. By way of further defense to the petition of the plaintiff the evidence further shows that a fraud was committed upon the defendant in order to get her to sign the papers in the office of the Greek Consulate supposedly consenting to the purported adoption of Constantine Neonakis through the Greek Court by her husband Nicholas Stergios and that because of such fraud the purported decree of the Greek Court is not a valid decree recognizable by this court.

Wherefore, defendant renews the prayer of her original answer asking that the Estate of Nick Stergios not be reopened, that the order approving the final report not be set aside, that an Administrator de bonis non not be appointed to administer the said estate, and that the plaintiff not be permitted to recover two-thirds of the assets of said estate and that the plaintiff not be given any equitable [fol. 55] remedies and relief.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

JUDGMENT AND DECREE—October 18, 1962

This matter came on for hearing before the Court on July 6, 1962. The plaintiff appeared by his attorneys, Gleysteen, Nelson, Harper, Kunze & Eidsmoe, by Robert R. Eidsmoe, and Allen J. Carew, and the defendant appeared personally and by her attorneys, H. A. McQueen and Phillip S. Dandos; and the Court, having heard the evidence and the arguments of counsel for the respective parties, having examined the exhibits admitted in evidence, and the file, and being well and fully advised, Finds:

Findings of Fact

The plaintiff is the duly appointed and acting Guardian of the property of the minor, Constantine Neonakis, having been so appointed as such by this Court on February 15, 1961. The minor is a resident of the country of Greece.

The defendant is now, and has been at all times material [fol. 56] hereto a resident of Sioux City, Iowa. She is the widow of Nick Stergios, who died a resident of this county on August 20, 1958, being at that time 66 years of age, and whose estate was probated in this court as No. 22041 Probate.

The defendant and the decedent, Nick Stergios, were married when the defendant was 18 years of age. She is approximately 34 years of age now, so the marriage occurred approximately 16 years ago or about the year 1946. There were no children born of this marriage, and during the marriage and particularly in 1956 the defendant and her

husband discussed adopting a child. Her husband was of Greek extraction and spoke both the Greek and English languages. The defendant speaks English, but she does not speak, read or understand Greek, and her education was limited to completion of the Sixth Grade. It appears that after some discussion with her husband about the adoption of a child which she states she thought would live with them, she and her husband in about the year 1958 went to the Greek Consulate in Chicago, where certain papers were signed by her "so we could have the baby." The evidence showed that while visiting the Greek Consulate all of the conversation was in Greek, except for that which she had with her husband.

[fol. 57] The defendant testified in this case that she signed the papers with reference to the adoption of the minor herein because she thought she would be the child's mother, and that she would not have signed if she had known it would be otherwise.

As a result of the execution of the papers at the Greek Consulate in Chicago by defendant and her husband, legal proceedings were commenced in Greece for the adoption of the minor herein by the decedent alone, and on February 22, 1958 a judgment of adoption was issued by one Stavros Tousas, President of the Court of First Instance of Heraklion, in Greece, whereby the minor herein, then being three years of age, was adopted to the decedent, alone. (Exhibit "3").

Shortly after making the trip to Chicago, the decedent became ill, and as herein above stated he died on August 20, 1958. The minor child, who was the son of Penelope Neonakis, a niece of decedent, was never brought to this country.

The decedent herein died testate, and his will, which is a part of the record herein, dated October 24, 1954, left certain designated real property "to my beloved ward, Eleftheria Stergios", and all other real and personal property to his spouse, the defendant herein.

[fol. 58] The plaintiff predicates this action upon the provisions of Sec. 600.6 of the 1962 Code of Iowa, which gives an adoptive child the right to inherit property the same as

a natural child, and Sec. 633.13 which provides that a legitimate child born after the making of a last will who is not provided for by any settlement and neither provided for nor mentioned in such will, shall have the right to inherit the same interest in the parent's real and personal property as though no will had been made, and provides for the taking of such share ratably from the interest of heirs, devisees and legatees. It is conceded that this section applies as well to after-adopted children as to after-born children.

The estate of the decedent has been fully probated and the minor herein was not named as an heir or beneficiary, has not been included in the distribution thereof, and during the course of the probate proceedings no Guardian Ad Litem was appointed for him at any stage of the probate of the estate.

The prayer of the plaintiff is that he be permitted to recover on behalf of his ward, the minor, a two-thirds interest in the estate of the decedent.

The defendant, in her pleadings filed herein, has denied [fol. 59] the material allegations of the plaintiff's petition, raises the question of consent on her part, and alleged fraud in the procuring of her signature to the instruments signed by her in the office of the Greek Consulate.

The ultimate issue of this case, then, is whether the minor, Constantine Neonakis, is entitled to share in the estate of the decedent, Nick Stergios, despite the provisions of the decedent's will.

Preliminary to the decision of that issue is the question of whether the judgment of adoption issued by the Greek Court is recognizable as valid. If it is to be so recognized, the question of whether the plaintiff is entitled to share in the estate in view of the limitations imposed by Sec. 567.8 of the 1962 Code of Iowa must be decided.

## Conclusions of Law

It is generally held that the status created by an adoption in a state having jurisdiction to create it, will be recognized by the courts of another state to such an extent, at least, as is not inconsistent with the laws and policy of the latter.

(1 C.J., Sec. 138, P. 1402; Cook v. Estates of Todd, 249 [fol. 60] Ia. 1277 (1958), citing Schick v. Howe, 137 Ia. 249.)

Further, when confronted with judgments of a foreign country, the courts have held that such judgment, rendered by a competent court in a proceeding in rem or affecting status is conclusive, and may not be examined on the merits unless there was fraud in securing it.

(46 ALR, 441, and cases cited.)

The Code of Iowa, Sec. 622.55, sets out the requirements relating to the authentication of copies of records and proceedings in the Courts of a foreign country prior to their admission in evidence in Courts of this state. The translation of the record of adoption in this case, at Page 5 of Exhibit "3", shows this record fully meets the requirements of the Iowa statute.

The question remains as to whether the defendant, Viola Stergios, has shown that her consent to the adoption of the minor by her husband was obtained through fraud, consent of the spouse of the adopting party being a prerequisite to adoption, according to Greek law. (Exhibit No. [fol. 61] "7", Interrogatory and answer No. 19.)

Before fraud could be found on the part of the deceased husband in obtaining his wife's consent, the proof thereof required by the law of Iowa must be more than that of a mere preponderance, and must be established by clear, convincing and satisfactory evidence.

When it is considered that the law of Greece prohibits the adoption by any person less than 50 years of age (Exhibit No. "7", Interrogatory and answer No. 16), and that the defendant herein did not qualify under that law because of her age at the time she consented to the adoption by her husband, it then becomes apparent why she, too, did not then join as an adopting party. But this does not lead to the conclusion that her husband was committing fraud upon her or had misled her in leading her to believe that she would be the mother of the child. He was acting upon the advice of his attorney, now deceased. It is more logical to presume that the attorney and the defendant's husband were pursuing the first step in obtaining a child for the defendant, of which she could be the mother, which she stated she

wanted, by completing the adoption in Greece by the husband and bringing the child to this country where the defendant could then adopt in accordance with our laws, re-
[fol. 62] gardless of the fact that she was under 50 years of age. This plan may or may not have been in the mind of the defendant's husband, but certainly where such an obvious explanation of his actions is apparent, the Court could not on the basis of the evidence introduced, find fraud on the part of the decedent, Nick Stergios. It must be remembered that defendant testified her husband became ill after the trip to Chicago and died in August of the same year, thus if his plans were as stated above, they were interfered with by his illness and death.

The Court concludes that the judgment of the Greek Court adopting the child to Nick Stergios is conclusive upon this Court, no fraud having been shown in its procurement.

Having so concluded, the question remains as to whether the minor child is entitled to share in the estate of the decedent in view of the restrictive provisions and procedural requirements of Sec. 567.8 of the 1962 Code of Iowa, which provides that the right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the exist-
[fol. 63] ence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents, and which further provide similarly as to personal property, placing the burden in each instance upon such non-resident aliens to establish the fact of existence of the reciprocal right referred to in the statute.

Plaintiff places reliance upon the provisions of a 1951 treaty between the United States and Greece (Exhibit "5"), and particularly Art. IX Sub-section 2 as answering defendant's contentions that the burden of proof required by Sec. 567.8 of the Iowa Code was not met, but this particular sub-

section deals not with the acquisition of property, but with its disposition after having been acquired. The Iowa statute prevents a taking of such property, which this Court concludes to be synonymous with the acquisition of property, except under the circumstances stated in the statute relative to reciprocity which must be proven by the plaintiff.

A reading of Art. IX, Sub-section 1 (a), shows that with respect to the acquisition by nationals of Greece of immovable property located in the United States, the laws of [fol. 64] the states are effective and recognized by the treaty. This recognition will extend to and include the section of the law of the State of Iowa with which we are concerned here, Sec. 567.8. and the treaty, therefore, does not make ineffective or attempt to nullify that law, nor the burden placed upon the plaintiff by that law. This section of the treaty appears to the Court to be an obvious recogniti n of the rights of the states to make, construe and enforce laws governing the rights of nationals of Greece to acquire immovable property located within the states of the United States.

Art. IX, Sub-sectio. 1 (a) and (b) of the treaty (Exhibit "5") merely provide that in the case of nationals of Greece the acquisition of immovable property located within the United States shall be dependent upon the applicable laws of the state within which the property is located: and, in the case of nationals of the United States, that the right to acquire property within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the rights of aliens to acquire immovable property.

These provisions are not, as the Court reads them, an indication that the reciprocal rights contemplated by Sec. [fol. 65] 567.8 of the Iowa Code exists, but strongly indicate that the laws of the parties to the treaty, though they may be entirely different will be effective with respect to the acquisition of immovable property.

The Court is unable to find that the plaintiff has carried the burden imposed by the statute in question. The presumption may not be indulged that such reciprocal rights

on the part of citizens of the United States do exist, but as stated, the Court can so find only after sufficient proof thereof has been introduced as required by the section. Additionally, some affirmative evidence on the part of the plaintiff was introduced tending to show that such reciprocal rights may not in fact exist. (Exhibit No. "7", Interrogatory and Answer No. 36).

It Is, Therefore, Ordered. Adjudged and Decreed by the Court that the petition of the plaintiff be, and it is hereby dismissed.

Costs taxed to plaintiff.

Plaintiff duly excepts.

Dated this 18th day of October, 1962.

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[fol. 66]

IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

NOTICE OF APPEAL—Filed November 2, 1962

To the above named defendant and to McQueen, Forker & Dandos, Attorneys for Defendant, and to Maurice Flanagan, Clerk of said Court:

The above named plaintiff hereby appeals to the Supreme Court of Iowa from the Final Judgment and Decree entered on the 18th day of October, 1962, said judgment dismissing plaintiff's Petition, and all rulings and orders inhering therein. You are notified that said appeal will be heard before said Supreme Court at the State House in Des Moines, Iowa, as provided by law and rules of said court.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

APPLICATION, STIPULATION AND ORDER EXTENDING TIME FOR FILING TRANSCRIPT

By application, stipulation and order of court granting [fol. 67] extentions of time in which to file transcript of record, said orders having been dated the 25th day of January 1963, the 26th day of February, 1963, and April 8, 1963, the time for filing transcript of record was set for the 1st day of May, 1963.

IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

AGREEMENT AS TO RECORD

It is agreed by and between the attorneys of record that the foregoing is a full and complete abstract of the record of this cause and may be the record on appeal.

Robert R. Eidsmoe, Gleysteen, Nelson, Harper, Kunze & Eidsmoe, Sioux City 1, Iowa, Attorneys for Plaintiff-Appellant.

Phillip S. Dandos, McQueen, Forker & Dandos, Sioux City, Iowa, Attorneys for Defendant-Appellee.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

CERTIFICATE OF TRIAL COURT AS TO RECORD—
April 8, 1963

[fol. 68] On this 8th day of April, 1963, it being called to the attention of the Court that the parties to this action have by agreement, filed in this cause, agreed that the abstract is correct, it is, therefore, certified by the Court that the abstract has been so agreed to and is to be the record on appeal.

Lawrence W. McCormick, Judge of the Fourth Judicial District.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

STIPULATION FOR CERTIFICATION OF EXHIBITS—
April 8, 1963

It is hereby stipulated by and between the parties in the above entitled proceedings that all the exhibits referred to and described in the record made in the District Court and the transcript of evidence will be certified by the Clerk of the Trial Court to the Supreme Court for examination in connection with this appeal; it being agreed that on account of the character and nature of said exhibits that the reproductions in the record would be unduly expensive and that the certification thereof to the Supreme Court would be in the interests of justice.

Dated this 8th day of April, 1963.

[fol. 69]

Robert R. Eidsmoe, Gleysteen, Nelson, Harper, Kunze & Eidsmoe, Sioux City 1, Iowa, Attorneys for Plaintiff-Appellant.

Phillip S. Dandos, McQueen, Forker & Dandos, Sioux City, Iowa, Attorneys for Defendant-Appellee.

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IN THE DISTRICT COURT OF WOODBURY COUNTY, IOWA

APPLICATION TO PREPARE RECORD ON APPEAL BY SETTING OUT PART OF THE TESTIMONY IN QUESTION AND ANSWER FORM

Comes Now the plaintiff-appellant, Stanley M. Corbett, Guardian of the Property of Constantine Neonakis, a minor, as is required by Iowa Rule of Civil Procedure 340 (d) and moves the Court to allow him to set out the following testimony in question and answer form for the purposes of clarity, continuity and to clearly set forth questions raised on appeal:

[fol. 70] 1. Offer and admission of plaintiff's Exhibit 3 from page 14, line 19 to page 16, line 19 of the transcript.

2. Testimony of John D. Dritsas as plaintiff's witness from page 16, line 22 to page 29, line 8 of the transcript.

3. The request to take judicial notice, offer and admission of plaintiff's Exhibit 5 from page 29, line 9 to page 30, line 12.

4. Offer and admission of portion of deposition of Viola Stergios, a/k/a Viola Steryiakis from page 39, line 15 to page 42, line 20 of the transcript.

5. Motion for Directed Verdict from page 45, line 7 to page 47, line 7 of the transcript.

6. Testimony of Mrs. Viola Stergios on behalf of defendant from page 48, line 11 to line 24 of page 48 of the transcript.

7. Testimony of Mrs. Viola Stergios on behalf of defendant from page 50, line 21 to page 51, line 4 of the transcript.

8. Testimony of Mrs. Viola Stergios on behalf of defendant from page 51, line 12 to line 21 of page 51 of the transcript.

9. Testimony of Mrs. Viola Stergios on behalf of defendant from page 53, line 3 to line 7 of page 53 of the [fol. 71] transcript.

10. Testimony of Mrs. Viola Stergios on behalf of defendant from page 54, line 3 to page 56, line 24 of the transcript.

11. Testimony of Mrs. Viola Stergios on behalf of defendant from page 57, line 25 to page 58, line 12 of the transcript.

12. Testimony of Mrs. Viola Stergios on behalf of defendant from page 59, line 8 to line 15 of page 59 of the transcript.

13. Testimony of Mrs. Viola Stergios on behalf of defendant from page 60, line 6 to line 14 of page 60 of the transcript.

14. Testimony of Mrs. Viola Stergios on behalf of defendant from page 65, line 16 to line 23 of page 65 of the transcript.

Robert R. Eidsmoe, Gleysteen, Nelson, Harper, Kunze & Eidsmoe, Sioux City 1, Iowa, Attorneys for Plaintiff-Appellant.

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ORDER—April 8, 1963

Now on this 8th day of April, 1963 this matter comes before the Court on the foregoing Application of Plaintiff-[fol. 72] Appellant to Prepare Record on Appeal by Setting Out Part of the Testimony in Question and Answer Form, and the Court having read said Application and the Court being advised in the premises, the Court finds that said

Application should be and it is hereby granted and Plaintiff-Appellant is hereby granted authority to set out the foregoing testimony in question and answer form.

Lawrence W. McCormick, Judge of the Fourth Judicial District.

[fol. 76] Clerk's Certificate to foregoing transcript (omitted in printing).

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[fol. 77] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

292/51095

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STANLEY M. CORBETT, Guardian of the Property of CONSTANTINE NEONAKIS, a Minor, Appellant,

v.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS, Appellee.

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Appeal from Woodbury District Court—L. W. McCormick, Judge.

OPINION—February 11, 1964

Action by guardian of a minor, a citizen of Greece, for two-thirds of property bequeathed under will to his widow and niece by Nicholas Stergios, a citizen of Iowa. Minor claimed he was entitled to two-thirds of the estate, because will was made before adoption. Trial court dismissed petition. Affirmed.

Gleysteen, Nelson, Harper, Kunze & Eidsmoe, of Sioux City, and George S. Porikos of Chicago, Illinois, for Stephanos G. Rocanas, Consul General of Greece, for appellant.

McQueen, Forker, Dandos & Larson, of Sioux City, for appellee.

[fol. 78] Peterson, J.

This is an action in equity by appellant to reopen the estate of Nicholas Stergios and set aside the final report in the estate. Petition also prays to recover two-thirds of the estate by plaintiff as guardian of Constantine Neonakis, a minor now approximately eight years of age, living on the island of Crete in Greece. Plaintiff alleged he was an adopted child of decedent; adopted after execution of decedent's will. The trial court held appellant had not carried the burden of proof necessary to establish the right of said minor to claim property in the United States, and dismissed the petition. Plaintiff appealed.

I. Nicholas Steryiakis, commonly known as Nick Stergios, came to the United States from Greece many years ago. He accumulated a substantial estate, mostly in real estate, valued at approximately $60,000. at time of his death. In March, 1946, he married defendant. At that time she was only eighteen years of age. She only had a sixth grade education, and was of Irish-English extraction. She never learned to speak, read or understand the Greek language. Mr. Stergios was fifty-four years of age when he married her. They never had any children of their own and in 1957 by mutual consent and discussion, they decided that Nick would adopt a child from Greece. The child was his great-nephew, being the son of Penelope Neonakis, a niece. Her husband had been killed in battle, and she was a widow.

Early in 1958 Nick and Viola went to Chicago to visit the Greek Consulate about the final procedure necessary to secure the little boy. Viola did not understand the conversation because it was all carried on in Greek between the officials of the Consulate and her husband Nick. The necessary adoption papers were signed by him. Viola also [fol. 79] signed a paper, although she could not read it and did not understand it. She was under the impression that both she and Nick were adopting the little boy. The paper she signed was only a consent to the adoption. A petition for adoption had previously been filed by Nicholas Stergios,

through an attorney-in-fact in the town of Heracleon on the island of Crete in Greece. The child's mother appeared for him, and consented to the adoption. The necessary hearings were held in court and on February 22, 1958, the court entered adoption decree.

August 20, 1958, Nick Stergios departed this life at Sioux City. He had made a will some years prior to his death in which he gave certain properties to a niece, and bequeathed the remainder of his estate to his widow Viola. She filed the will. It was duly probated. In the course of time the estate was closed and the property divided between the widow and the niece in accordance with the terms of the will.

February 15, 1961, Stanley M. Corbett, of Sioux City was appointed guardian of the property of Constantine Neonakis, and this action was started against Viola Stergios for the recovery of two-thirds of the property, on the theory that Neonakis was the heir of Nick Stergios, becoming such heir because the will was made long before the adoption.

II. Appellant urges this one proposition relied upon for reversal: "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father."

Appellant raises four questions under the above general statement, which he calls Brief Points, as follows: "1. [fol. 80] Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state constitutions, statutes and common law are in conflict, they are suspended or invalidated." "2. The treaty between the United States and Greece clearly allows citizens of Greece the right to inherit real and personal property located in any of the states and territories although state law may limit the period of time during which it may be held by the alien." "3. By virtue of the most-favored-nation clauses contained in the Treaty between the United States and Greece, a Greek national is entitled to the benefit of treaties which may be even more liberal than the Greek treaty." "4. Treaties must be interpreted liber-

ally so as to give effect to all rights which may reasonably be claimed thereunder."

III. In order to clarify the situation as between the treaty and our statutory provisions a brief legislative history is advisable. Such statutory provisions appear in chapter 567 denominated "Rights of Aliens." What is now section 567.1 was adopted in 1868 and has been carried in practically the same form in our various Codes throughout the years. In general the section provides that nonresident aliens may hold a devise or a distribution under a will for a period of 20 years. It limits the holding of nonresident alien to 320 acres of land and places no restriction upon personal property.

Various implementing sections were adopted in later years, some appearing first in the Code of 1897 and later Codes, and another section appeared first in the Code of 1913. Considering the chapter incomplete the General Assembly in 1951 adopted section 567.8 pertaining to nonresident aliens which became effective July 4, 1951. It provides: "Aliens' inheritances. 1. The right of aliens not residing within the United States or its territories to take [fol. 81] real property in this state by succession or testimentary disposition, upon the same terms and conditions as residents and citizens of the United States *is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions* as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. 2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1." (Emphasis ours.)

There was offered in evidence and made a part of the record a document known as "TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF GREECE." It was entered into between the two nations in 1954. It pertains to many matters and contains 26 articles.

Article I provides: "Each party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of the nationals and companies of the other party."

Article VIII provides in part: "Neither party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interest within its territories of nationals and companies of the other party * * * "

[fol. 82] Article IX pertains specifically to the ownership of property of the nationals of the respective countries in the other country. Section 1A states: "In the case of nationals * * * of Greece the acquisition by purchase, *or otherwise*, of ownership rights in land, buildings, and other immovable property within the territories of the United States, shall be dependent upon the applicable laws of the *states*, * * * of the United States of America within which such property is located." Section 1B provides: "In the case of nationals * * * of the United States of America the right to acquire by purchase, or otherwise, * * * land, buildings, and other immovable property within the territories of Greece, *shall be subject to restrictions which Greece may consider it necessary to impose on the right of aliens to acquire by purchase, or otherwise*, * * * such property in specific frontier and coastal areas." (Emphasis supplied.)

"2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

"3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds."

"Article XXIV

"1. The term 'national treatment' means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. *The term* [fol. 83] *does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.*" (Emphasis ours.)

"2. The term 'most-favored-nation treatment' means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country."

Section 567.8 is specific on the matter of reciprocal rights of citizens of the United States and citizens of contracting countries. The importance of reciprocity is emphasized by the terms and conditions of the section. It has been recognized by the Supreme Court of the United States in Clark v. Allen, 331 U.S. 503, in the following language: "The argument is based on the fact that under the statute the right of non-resident aliens to take by succession or testamentary disposition is dependent upon the existence of a reciprocal right on the part of citizens of the United States to take personalty on the same terms and conditions as residents and citizens of the other nation. The argument is that by this method California seeks to promote the right of American citizens to inherit abroad by offering to aliens reciprocal rights of inheritance in California. Such an offer of reciprocal arrangements is said to be a matter for settlement by the Federal Government on a nation-wide basis. * * * Nor has California entered the forbidden do-

main of negotiating with a foreign country * * * What California has done will have some incidental or indirect effect in foreign countries. But that is true of many state laws which none would claim cross the forbidden line." [fol. 84] The decision approved the reciprocal right theory.

IV. Under brief points 1 and 2 appellant contends the trial court erred in that treaties between the United States and foreign governments are the supreme laws of the land and that in fact the provisions of the treaty and the provisions of 567.8 were in conflict and the treaty superseded the terms of 567.8. Appellant contends under Article IX, Section 2, nationals of Greece were permitted to freely dispose of property in Iowa depending on the provisions of Section 567.1. In the first place the provision of the treaty which requires reciprocal rights as between the nationals of the two contracting countries supersedes any other and later provisions. In Article XXIV, Section 1 of the treaty we find a provision explaining and to a certain extent nullifying the provisions of Article IX, Section 2, where it states: "The term 'national treatment' means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, the nationals of such parties. The term does not imply immunity from the laws and regulations * * * of both parties."

Appellant emphasizes disposal of property. He ignores the fact that before the ward can own and dispose of the property he must acquire it according to: 1. Laws of Iowa. 2. Reciprocal provision of treaty. 3. By carrying the burden of proof as to all facts.

In the case at bar the matter of alien ownership of property is covered by chapter 567. The laws of the State of Iowa are not in conflict with the treaty as a matter of law, in connection with the case at bar. It is a question of fact. In Article IX, Section b, the Kingdom of Greece reserves the right to restrict the right of aliens to acquire by purchase or otherwise, property in specific frontier and [fol. 85] coastal areas. Constantine lived in a frontier and coastal area. This is a factual situation and is not a technical legal question. This is the point at which the trial court held appellant had not carried his burden of proving

certain facts in the case. The facts appellant failed to prove were either that Greece had not imposed conditions on United States nationals on the island of Crete in Greece, or if some restrictions had been placed on United States nationals, were they such as interfered in any manner with the provisions of Section 567.8. It was at this point in the treaty Greece reserved the right to put restrictions on United States nationals. Did they or did they not put on restrictions? The record is silent as to these facts. The primary question, and the one of first importance, *of reciprocal rights*, has been clearly emphasized in several Iowa decisions in which the question of inheritance taxes was involved. Inheritance tax is fixed at 20 per cent on property passing under a will to, or inherited by aliens. Code of Iowa, section 450.11.

We have held if United States nationals are entitled under the laws of another contracting country, or by treaty with such country, to the same inheritance tax percentages as nationals of the contracting country, we will only charge the alien the same percentage in our state. McKeown v. Brown, 167 Iowa 489, 149 N.W. 593; Re: Moynihan, 172 Iowa 571, 151 N.W. 504; Brown v. Peterson, 185 Iowa 314, 170 N.W. 444.

If there is an unreconcilable conflict between sections 567.1 and 567.8, the late enactment will control. State v. Blackburn, 237 Iowa 1019, 22 N.W.2d 821; Iowa-Nebraska L & P Co. v. Villisca, 220 Iowa 238, 261 N.W. 423; State v. Harper, 220 Iowa 515, 258 N.W. 886; 82 C.J.S., Statutes, section 368, page 839.

[fol. 86] In the case at bar this is a reasonable development, as there have been many changes among the relationship of people and nations, and as to statutes and treaties between 1868 and 1954.

V. Under brief point 3 appellant contends his ward is entitled to some type of benefits by reason of the most-favored-nation clause in the treaty. A peculiar situation pertains to the treaty as to most-favored-nation treatment.

The Treaty with Greece provides for most-favored-nations treatment in regard to only certain subjects in the

Treaty. Among the 26 articles of the treaty providing for most-favored-nations treatment are only Articles II, VI, VII, XII, XVII, XIX and XXI and XXIV.

*There is no such most-favored-nations provision in Article IX of the Friendship Treaty with Greece.* This is the article which plaintiff-appellant attempts to apply in seeking relief from the court. The other articles specifically spell out when the most-favored-nations provision is to apply. Since Article IX contains no such provision, we can only assume that Congress did not intend to apply the most-favored-nations provision to this article.

The German Treaty in Article XI specifically refers to the most-favored-nations treatment in disposing of property. This is different than the Greek Treaty which does not mention such treatment. Since the Treaties were enacted at approximately the same time, we can only assume that Congress intended that as far as the Greek Treaty is concerned the most-favored-nations treatment would not apply to Article IX.

We have here a different situation than the case of *Santovincenzo* v. *Egan*, cited in plaintiff-appellant's Brief. [fol. 87] There the Treaty specifically contained a most-favored-nations Treaty provision with regard to the subject under consideration. This is different than the Greek Treaty as far as Article IX is concerned. It would be wrong to apply the most-favored-nations Treaty clause to the pertinent article of the Greek Treaty when it contained no such provision. This would give it an application broader than intended.

The quotation from the Friendship Treaty with Greece on page 28 of plaintiff-appellant's Brief is apparently from the preamble of this Treaty, and does not refer to specific articles as they appear in the treaty.

VI. The fourth brief point of appellant is that treaties should be interpreted liberally so as to give effect to all rights which may reasonably be claimed thereunder. This theory of liberal treatment is considered in Kolovrat v. Oregon, 366 U.S. 187; Doehrel v. Hillmer, 102 Iowa 169, 71 N.W. 204. Liberal interpretation is all right as to

doubtful clauses, but it must not change the meaning of a treaty.

In the case of Doehrel v. Hillmer, supra, we said: "Where a treaty admits of two constructions, one restrictive as to rights that may be claimed under it and the other liberal, the latter is to be preferred."

This theory is correct where two constructions are possible, but in the first place there are no two constructions to be differentiated in the case at bar, and in the second place the theory of liberality does not reach to the point of changing the clear meaning of treaties and statutes. We are not faced with the dilemma in the instant case.

A treaty between nations is dual in purpose. It establishes broad political and commercial rights as between the governments of the two nations. It also grants privileges, rights [fol. 88] and obligations between the citizens of each nation, commonly known as nationals. 87 C.J.S., Treaties, sections 1 and 2; 52 Am. Jur., Treaties, sections 1 and 4.

In a judicial construction of a treaty the same general rules apply as pertain to contracts and statutes. As in such cases the intention of the parties shall have primary consideration. 52 Am. Jur., Treaties, section 12. In re Anderson's Estate, 166 Iowa 617, 147 N.W. 1098.

As pertaining to the case at bar some of the statements in Am. Jur., supra, are relevant. " * * * a treaty should be given such a construction as will avoid unjust and unreasonable conclusions * * * and such as tends to the common advantage of the contracting parties * * * but not such as will put aliens on a more favorable footing than our own citizens." Also "The courts are not required to * * * place an unreasonable interpretation on it, for the purpose of securing to foreigners privileges which are denied to citizens of this country."

VII. Recapping briefly. The trial court found plaintiff had not carried the burden of offering sufficient evidence to comply with terms of section 567.8. The court correctly states it cannot be presumed reciprocal rights exist; proof must be introduced.

Subsection (a) provides nationals of Greece may acquire by purchase, or otherwise (like inheritance) the ownership of property in accordance with applicable laws of States within which the property is located. This right is definite and specific.

Subsection (b) provides nationals of the United States may acquire property in Greece by purchase, or otherwise, but such acquisition *"shall be subject to restrictions which Greece may consider it necessary to impose on the rights of aliens * * * in specific frontier and coastal areas."* [fol. 89] Appellant failed to carry the burden of proof as to restrictions, if any, imposed by Greece; or if none, the fact that there were none.

There is complete lack of reciprocity under Code section 567.8. Professor Boyd worded it succinctly, and we believe correctly, in his article in 47 Iowa Law Review, supra, in following language: "The language of section 567.8 of the Iowa Code permits only two alternatives; the alien residing in a foreign country can either take real or personal property by succession on equal terms with residents and citizens of the United States or he can take nothing."

VIII. The decision of the trial court was also based upon the fact that there is a lack of reciprocity as follows: In Iowa there appears in section 600.6, Code of Iowa, the following provision: "Status of the adopted child. Upon the entering of such decree, the rights, duties, and relationships between the child and parent by adoption shall be the same that exists between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and children born in lawful wedlock."

A duly verified copy of the Greek civil law pertaining to adoption was offered in evidence. A portion of Article 1643 of chapter 13, pertaining to adoption provides as follows: "The adoptive parent does not have any inheritance rights over the adopted child."

This is not reciprocity as between the citizens and nationals of the two countries. The provisions are contrary to each other.

The decision of the trial court is affirmed.

Affirmed.

Hays, Larson, Thornton and Stuart, JJ., concur.

Garfield, C.J., and Thompson, Snell and Moore, JJ., dissent.

[fol. 90] (Corbett, Gdn. v. Stergios, 292-51095)

GARFIELD, C.J. (dissenting)

I must dissent.

Plaintiff-appellant states a single proposition he r lies on for reversal—that the trial court erred in holding the treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father.

In an able brief plaintiff cites Article VI of the federal constitution, three decisions of the supreme court, our own case of Opel v. Shoup, 100 Iowa 407, 423, 69 N.W. 560, 37 L.R.A. 583, and the article by Professor Boyd in 47 Iowa Law Review 105, 117, to which the majority refers, as authority for the point that treaties between the United States and foreign governments are the supreme law of the land and insofar as state statutes are in conflict therewith they are suspended. To like effect are Doehrel v. Hillmer (Ladd, J.), 102 Iowa 169, 171, 71 N.W. 204, and In re Klug's Estate, 251 Iowa 1128, 1136, 104 N.W 2d 600, 604.

The annotation in 4 A.L.R. 1377, 1383-4, cites a long list of decisions, including many others from Iowa, for the point plaintiff makes. Additional, more recent, precedents are cited in Anno. 134 A.L.R. 882, 885.

The article by Professor Boyd, supra, states: "Because treaties are given supremacy over state laws by the federal constitution, restrictions su h as Iowa has placed on rights of nonresident aliens are of no effect when in conflict with more liberal treaty provisions."

[fol. 91] Plaintiff's principal reliance is upon Article IX, 2, of the treaty between the United States and Greece which provides: "2. Nationals and companies of either Party shall be permitted freely to dispose of property within the terri-

tories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition."

Plaintiff argues this provision, means that if a Greek national is prevented by his alienage from acquiring by succession property in a state in the same manner an American national may acquire it, the Greek shall be permitted to dispose of the property within five years. In other words, it is plaintiff's contention that Article IX of the treaty provides Greeks shall be able to acquire property in the United States but the states may place restrictions on its acquisition. And if they do, the Greek shall have up to five years to dispose of his property.

The article by Professor Boyd in 47 Iowa Law Review 105, 116-7, refers to a number of recent treaties of "Friendship, Commerce and Navigation," as this treaty is designated, between the United States and a foreign country which "have required that the alien beneficiaries dispose of the property within five years."

An article by Professor Boyd in 51 Michigan Law Review 1001, 1016, states: "The predominant treaty right granted to aliens is a qualified one. The alien is allowed a specified period of time in which to liquidate the realty and remove the proceeds without restraint or interference from the country in which it is situated. By this method the states are left to determine their own policies concerning the holding of realty by aliens and at the same time the alien is allowed the market value of the property and forfeiture is avoided."

[fol. 92] Professor Boyd observes at page 118 of his article, supra, in the Iowa Law Review, "It is often said that treaties are to be liberally construed in order to effectuate the spirit of the nations' agreement."

The United States supreme court has said: "where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and the other liberal, the latter is to be preferred." (Citation.) Hauenstein v. Lynham, 100 U.S. 483, 487, 25 L.Ed. 628, 629. Doehrel v.

Hillmer, supra, 102 Iowa 169, 172, 71 N.W. 204, 205, quotes this with approval.

If Article IX, 2, of the treaty here is fairly susceptible of the meaning plaintiff ascribes to it, and I think it is, it seem clear the restriction on ownership of property contained in our Code section 567.8, on which the majority decides this case, is suspended or rendered ineffective by the treaty unless the Greek national attempts to hold the property longer than five years. Plaintiff appears to have a valid claim under the terms of this treaty to the property in controversy here. The more restrictive and conflicting provisions of our Code section 567.8 are ineffective as to plaintiff's ward and plaintiff is not required to prove the existence of reciprocal rights as the statute contempla es.

I think Doehrel v. Hillmer, supra, 102 Iowa 169, 71 N.W. 204, and Ahrens v. Ahrens, 144 Iowa 486, 489, 123 N.W. 164, tend to support this view. The Ahrens opinion states, "That the right to sell carried with it the ownership as a necessary incident to the power of sale is held by all the authorities."

I understand the principal basis of the majority's decision is plaintiff's failure to prove that under Greek law no restriction not reciprocal is placed on the right of nationals [fol. 93] of the United States to inherit property in Greece and we are told plaintiff had the burden to establish such reciprocal right. It is true our Code section 567.8, 2 so provides. However, the treaty contains no such provision and it is "the supreme law of the land." The requirement of our statute is more restrictive than the provisions of the treaty and they control. The effect of the majority opinion is that more restrictive provisions of section 567.8, 2 are made to supersede the treaty.

I would reverse.

Thompson, Snell and Moore, JJ., join in this dissent.

[fol. 94] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 95]

IN THE SUPREME COURT OF IOWA

No. 51095

STANLEY M. CORBETT, Guardian of the Property of CONSTANTINE NEONAKIS, a Minor, Appellant,

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 23, 1964

I.

Notice is hereby given that Stanley M. Corbett, Guardian of the Property of Constantine Neonakis, a minor, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Iowa affirming the decision of the District Court of the State of Iowa in and for Woodbury County, Iowa, entered in this action on the 11th day of February, 1964.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

II.

The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following portions of the record submitted by Plaintiff-Appellant in his appeal to the Supreme Court of Iowa:

[fol. 96] (a) All of pages 3 through 9, inclusive, and lines 1 through 32 of page 10, inclusive.

(b) Lines 21 through 34, inclusive, of page 13; all of pages 14 and 15, and lines 1 through 12, inclusive, of page 16.

(c) Line 34 of page 35; all of page 36, and lines 1 through 18, inclusive, of page 37.

(d) Page 41, lines 26 through 33, inclusive; page 42, lines 33 and 34; page 43, lines 1 through 9, inclusive, and lines 22 through 26, inclusive, of page 43.

(e) Page 53, lines 8 through 13, inclusive.

(f) Page 55, lines 4 through 34, inclusive; pages 56 through 65 including Exhibit 5, inclusive; lines 1 through 27, inclusive, of page 66.

(g) Opinion and Judgment of Iowa Supreme Court reported in 255 Iowa ——, and 126 NW 2d 342 (1964).

III.

The following question is presented by this appeal:

Whether the Treaty of Friendship and Commerce between the United States and Greece nullifies the requirement of Section 567.8, Code of Iowa, 1958, that appellant non-resident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate by intestate succession from his adopting father.

George S. Porikos, 221 North LaSalle Street, Chicago, Illinois; Of Counsel: Robert R. Eidsmoe, 611-621 Security Building, Sioux City 1, Iowa, Attorneys for Stanley M. Corbett, Guardian of the Property of Constantine Neonakis, a Minor, Appellant.

[fol. 97] Proof of Service (omitted in printing).

[fol. 98] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 99]

SUPREME COURT OF THE UNITED STATES

No. 179—October Term, 1964

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STANLEY M. CORBETT, Guardian of the Property of CONSTANTINE NEONAKIS, a minor, Appellant,

v.

VIOLA STERGIOS, etc.

---

Appeal from the Supreme Court of the State of Iowa.

ORDER NOTING PROBABLE JURISDICTION—January 18, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

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In the

# Supreme Court of the United States

179

..... Term, 1964

No. [redacted]

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant.*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## JURISDICTIONAL STATEMENT

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June, 1964

Cockle Printing Company—Law Briefs—Omaha, Nebr.

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# In the
# Supreme Court of the United States

.....Term, 1964

No. _____

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## JURISDICTIONAL STATEMENT

Appellant appeals from the opinion and judgment of the Supreme Court of the State of Iowa filed and entered on February 11, 1964, the same being a final Order dismissing Appellant's Petition in Equity.

## OPINIONS BELOW

A. Final Order here sought to be reviewed:

Appendix I.—Opinion and Judgment of the Supreme Court of the State of Iowa, filed February 11, 1964, affirming Judgment and Decree of the District Court of

the State of Iowa, in and for Woodbury County, dated October 18, 1962.

B. Earlier Judgment Entry:

Appendix II.—Judgment and Decree of the District Court of the State of Iowa, in and for Woodbury County, dated October 18, 1962.

C. Opinion Reported Below:

*Corbett v. Stergios*, ___ Iowa ___, 126 N. W. 2d 342 (1964). (Copy of Opinion set out in Appendix I.)

## GROUNDS FOR JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

### A. Nature of the Proceeding

This is an action in equity brought by Appellant in the District Court of Iowa, in and for Woodbury County, to reopen the Estate of Nicholas Stergios, No. 22041 Probate, Woodbury County, Iowa, to rescind the Final Report filed therein, and to recover by Appellant two-thirds of the value of the assets of the estate. Appellant claims two-thirds of the estate on the basis that Appellant's ward, a minor residing in Greece, was the adopted child of the deceased Nick Stergios. Nick Stergios died leaving a Will providing only for his wife and a niece, making no mention of children.

The matter was tried before the Honorable Lawrence W. McCormick on July 6, 1962. On October 18, 1962, the Court entered its finding of facts and conclusions of law. Therein the Court found that a valid adoption had taken

place, which would be recognized by the Iowa Courts and that no showing of fraud had been made by Defendant-Appellee. The Court did find, however, that the Treaty between the United States and Greece did not nullify the provisions of Section 567.8, Code of Iowa, 1958. This section, the Court found, places upon Appellant the burden of proving that Greece grants citizens of the United States the right to inherit real estate in Greece before Appellant's ward could inherit in Iowa. Since Appellant did not prove this and the Court found the Treaty did not nullify the Iowa statute, the Trial Court dismissed the action. (See Appendix II.)

Appellant appealed to the Supreme Court of the State of Iowa assigning as error the holding of the Trial Court that the Treaty between the United States and Greece did not allow Plaintiff-Appellant's ward, a citizen of Greece, to take an interest in the estate of his adopting father. On February 11, 1964, by a 5 to 4 decision the Iowa Supreme Court found there was no conflict between the Treaty provisions and Section 567.8, Code of Iowa, 1958, which would nullify the latter. The Court thereupon affirmed the Trial Court's judgment dismissing Appellant's Petition. (See Appendix I.)

**B. Dates of Judgment and Appeal**

The final Order here sought to be reviewed was made and entered on February 11, 1964. No rehearing was requested.

Notice of Appeal to the Supreme Court of the United States was filed by this Appellant in the Supreme Court of the State of Iowa on April 23, 1964.

### C. Statute Conferring Jurisdiction Upon the Supreme Court

This appeal is taken pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U.S.C. Sec. 1257 (2). This is an appeal from a final judgment of highest Court of the State of Iowa, where is drawn in question the validity of Section 567.8, Code of Iowa, 1958, on the ground that it is repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and Greece. The Opinion and Order of the Supreme Court of the State of Iowa dated February 11, 1964, found the Iowa statute to be valid.

### D. Cases Believed to Sustain Jurisdiction of the Supreme Court in this Appeal

Appellant submits that the following cases decided by this Court sustain its jurisdiction of this appeal. *Hamilton v. Regents of the University of California*, 293 U.S. 245 (1934), rehearing denied 293 U.S. 633 (1935); *Standard Oil Co. of California v. Johnson*, 316 U.S. 481 (1942); *Bantam Books, Inc., v. Sullivan*, 372 U.S. 58 (1963).

### E. State Statute and Federal Treaties Involved in Appeal

This action involves the validity of Section 567.1, Code of Iowa, 1958, and Section 567.8, Code of Iowa, 1958. The full text of the two sections of the Iowa Code is set out in Appendix III. The two sections of the Iowa Code are deemed to be repugnant to the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece, Aug. 3, 1951 (1954), 2 U.S.T. & O.I.A. 1829, T.I.A.S. No. 3057. The text

of the pertinent Articles of the Treaty is set out in Appendix IV.

## QUESTIONS PRESENTED BY THE APPEAL

The following question, set out in the Notice of Appeal, or fairly comprised therein, is presented by this appeal:

(1) Whether the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece nullifies the requirement of Section 567.8, Code of Iowa, 1958, that Appellant non-resident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate by intestate succession from his adopting father?

## STATEMENT OF THE CASE

Appellee married Nicholas Stergios in March, 1946. No children were born of the marriage. On October 20, 1954, Nick Stergios executed a Will naming as his sole beneficiaries, his wife, the Appellee, and a niece known as Eleftheria Stergios. No mention was made of testator's intention to provide for or not to provide for children or afterborn children.

During the year 1956, the Appellee and her husband discussed adopting a child. Proceedings were instituted and completed in the Court of the First Instance of Heracleon, Island of Crete, Kingdom of Greece, whereby Appellant's ward, Constantine Neonakis, a minor child re-

siding in and a citizen of Greece was adopted by Nick Stergios. The Trial Court found that the adoption took place in accordance with Greek law and with the consent of Appellee. The adoption took effect on February 22, 1958, the date of the decree of the Greek Court.

Shortly after the adoption Nick Stergios became ill and died on August 20, 1958. The minor child, who was the son of a niece of Nick Stergios, was never brought to this country.

The Will of Nick Stergios, dated October 20, 1954, was probated as Number 22041 Probate in Woodbury County, Iowa. The minor child was not listed in the probate proceedings as a beneficiary and notice was not given to the minor or any legal representative of any probate proceedings. The estate was closed on March 26, 1959. No distribution was made to Appellant's ward.

On February 15, 1961, Stanley M. Corbett, an attorney, was appointed Guardian of Constantine Neonakis, a minor. Shortly thereafter suit was commenced by the Guardian, Appellant herein, to reopen the estate, set aside the Final Report, and to recover for the minor ward two-thirds of the Estate of Nick Stergios.

Trial was held in equity without jury on July 6, 1962. It was contended in the pleadings and at the trial by Appellant that Appellant's ward was entitled to two-thirds of the estate by virtue of Section 633.13, Code of Iowa, 1958. That section provides in substance that when a testator shall have a child born after the making of a Will and shall die leaving such child neither provided for or mentioned in the Will, such child shall inherit from the

deceased parent as though no Will had been made. A child's intestate share of his parent's estate in Iowa is two-thirds of the estate.

At the trial, as part of Appellant's case, Appellant contended that Section 567.8, Code of Iowa, 1958, was nullified by virtue of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece. Appellant, as part of Appellant's case, asked the Court to take judicial notice of the Treaty and offered into evidence a copy of the Greek Treaty as Plaintiff-Appellant's Exhibit "5". This Treaty was offered and received in evidence for the purpose of showing that Section 567.8, Code of Iowa, 1958, was repugnant thereto and to establish the nullification of the Iowa statute.

Section 567.8, Code of Iowa, 1958, set out in full in Appendix III, provides in essence that nonresident aliens may not take title to real property in Iowa unless the nonresident alien can prove the existence of reciprocal rights of succession given to United States citizens to inherit real estate in the foreign country. Here, therefore, under the provisions of Section 567.8, Appellant must prove that Greece gives United States citizens the right to inherit real estate in Greece before Appellant's ward could inherit Iowa real estate.

Appellant contended at the time of trial that Section 567.8, Code of Iowa, 1958, was nullified by the Greek Treaty, and particularly Article IX thereof. The pertinent portions of the Treaty are set out in Appendix IV. Appellant contends that Article IX of the Treaty grants to

nationals of either party to the Treaty, national treatment with respect to the acquiring property in the territory of the other. With respect to Greek nationals, Section 1(a) of Article IX does provide that the acquisition of property within the United States shall be dependent upon the law of the State within which the property is located. This would appear to indicate that in spite of the Treaty, Iowa could place restrictions on the right of aliens to take title to Iowa real estate, such as those provided by Section 567.8, Code of Iowa, 1958. Section 2 of Article IX of the Treaty provides, however, where a national of either country is prevented from receiving national treatment in the acquisition of property by testate or intestate succession because of his alienage, the foreign national shall be given five years to dispose of the property.

Appellant contended at the trial, and still does, that Article IX of the Greek Treaty clearly nullifies Section 567.8, Code of Iowa, 1958, in that the Iowa Code requires proof of reciprocal rights of succession and the Treaty does not. Unless the Appellant could prove that Greece grants United States citizens the right to take real property in Greece, Appellant could not hold title to Iowa real estate by virtue of the Iowa statute. Appellant contends that the Treaty provides that even where state law restricts ownership of real estate by Greeks in the United States because of their alienage, they shall have five years to effect sale of the property and to remove the proceeds.

On October 18, 1962, the Trial Court entered its Judgment and Decree, set out in full as Appendix II, at which time it found that a valid adoption had been effected by which Appellant's ward became the adopted child of Nick

Stergios, and that the status should be recognized by Iowa. The Court did find, however, that Appellant had not proved the existence of reciprocal rights to succession as required by Section 567.8, Code of Iowa, 1958, and that the Treaty did not nullify the Iowa statute. The Court stated:

> "This recognition will extend to and include the section of the law of the State of Iowa with which we are concerned here, Sec. 567.8, and the treaty, therefore, does not make ineffective or attempt to nullify that law, nor the burden placed upon the plaintiff by that law."

The Trial Court thereupon dismissed Appellant's Petition in Equity.

Appellant thereupon appealed the ruling of the Trial Court to the highest Court in the State of Iowa, the Iowa Supreme Court, assigning as the sole ground of error, the following:

> "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father."

On February 11, 1964, the Supreme Court of Iowa entered its final judgment and opinion affirming the Trial Court. Four of the nine Justices dissented. The only issue discussed or determined was the assignment of error presented by Appellant as to whether the Treaty nullified the requirements of Section 567.8, Code of Iowa, 1958.

This same proposition has been presented by Appellant in the Notice of Appeal filed as a prerequisite to an appeal to this Court.

Therefore Appellant drew into question the validity of Section 567.8, Code of Iowa, 1958, on the ground that it was repugnant to the Treaty between the United States and Greece at the beginning of the trial. That, and only that issue was decided adversely to Appellant by the Trial Court when it upheld the validity of the Iowa statute. Only the question of the validity of the Iowa statute was discussed by the Iowa Supreme Court and the decision of the majority was in favor of the validity of the statute. Therefore, this case clearly falls within the scope of 28 U. S. C., Section 1257(2), and this Court can find jurisdiction for appeal.

## GROUNDS FOR CONTENDING FEDERAL QUESTIONS ARE SUBSTANTIAL

The scope and effect of a Treaty between the United States and Greece is here in question. The highest Court of the State of Iowa gave an extremely restrictive interpretation to the Treaty provisions. The precise question presented is whether Section 567.8, Code of Iowa, 1958, making necessary proof of reciprocal rights of succession by a Greek national in order to enable him to acquire any interest in Iowa real estate by testate or intestate succession, has been nullified by the Greek Treaty.

The Iowa Supreme Court held that reciprocal rights to succession must be proved by a Greek national before he can acquire the right to sell the property inherited within the five year period of time specified in Section 2 of Article IX of the Treaty. Since Appellant did not

prove the existence of reciprocal rights of succession the Iowa Court dismissed Appellant's Petition.

Appellant maintains that the treaty nullifies state statutes and constitutions to the extent they are in conflict with the Treaty. The Greek Treaty here in question provides in Article IX thereof that nationals of either party within the territory of the other party shall be accorded national treatment with respect to acquiring property. The right of Greeks to acquire property in the United States shall be dependent upon the laws of the States within which the property is located. Section 2 of Article IX of the Treaty, however, states that where a party is prevented by his alienage from receiving national treatment in the acquisition of property by succession he shall be given five years to freely dispose of the property.

Appellant and a four justice minority of the Supreme Court of Iowa maintained that Section 2 of Article IX of the Treaty clearly nullified Section 567.8, Code of Iowa, 1958. The Iowa statute makes Appellant prove the right of reciprocal succession because of his Greek alienage. His alienage could prevent Appellant from receiving national treatment in the acquisition of Iowa real estate if he could not prove the existence of reciprocal rights of succession. Consequently, Section 2 of Article IX of the Treaty comes into play. Since Appellant's alienage under Iowa law would prevent him from receiving national treatment in the acquisition of the property in question, he should be given five years to dispose of the property. Section 2 of Article IX of the Treaty confers rights upon Greek nationals broader than those conferred by the Iowa

statute. Appellant and the minority of the Supreme Court of Iowa contend therefore that the Iowa statute is to that extent nullified.

This interpretation of the Greek Treaty is in accord with a previous decision of the United States Supreme Court in the case of *Clark v. Allen,* supra, which involved the interpretation of the effect of a German Treaty on a California reciprocal succession statute nearly identical to Section 567.8, Code of Iowa, 1958. The requirement of the California statute necessitating proof or reciprocal rights of succession was nullified by a Treaty between the United States and Germany, which gave German nationals three years to sell and remove the proceeds.

A substantial nonfrivolous federal question is presented by this appeal. Four of the nine Iowa Supreme Court Justices agreed with the Appellant's position in a dissenting opinion written by the Chief Justice. Nor is the amount in controversy unsubstantial, as the amount claimed by Appellant of the Appellee and the estate is nearly $40,000.00.

Furthermore, it should be noted the effect of the decision of the Iowa Supreme Court will extend beyond the litigants and an interpretation of the Iowa statute. As pointed out by Professor Willard L. Boyd of the College of Law at the University of Iowa in 51 Georgetown Law Journal 470, eleven states, including Iowa, have enacted the so-called reciprocal succession statutes. The effect of the case at bar, unless reversed, will be that the rights obviously granted by the Greek Treaty could be substantially restricted in eleven states in a manner certainly

contrary to the purpose of the Treaty stated preamble thereof. The interpretation placed upon the Treaty by the Iowa Supreme Court would make utterly meaningless all of Article IX of the Treaty, and make the right of a Greek national to acquire real estate in the United States entirely subject to state legislation. Certainly the rights granted to United States nationals by Greece to acquire property in Greece were not granted by Greece with that interpretation in mind. In order to protect the international commitments of this country, then, jurisdiction of this case should be accepted.

Respectfully submitted,

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June, 1964

## APPENDIX I.

### Opinion and Judgment of the Supreme Court of Iowa Dated February 11, 1964

PETERSON, Justice.

This is an action in equity by appellant to reopen the estate of Nicholas Stergios and set aside the final report in the estate. Petition also prays to recover two-thirds of the estate by plaintiff as guardian of Constantine Neonakis, a minor now approximately eight years of age, living on the island of Crete in Greece. Plaintiff alleged he was an adopted child of decedent; adopted after execution of decedent's will. The trial court held appellant had not carried the burden of proof necessary to establish the right of said minor to claim property in the United States, and dismissed the petition. Plaintiff appealed.

I. Nicholas Steryiakis, commonly known as Nick Stergios, came to the United States from Greece many years ago. He accumulated a substantial estate, mostly in real estate, valued at approximately $60,000 at time of his death. In March, 1946, he married defendant. At that time she was only eighteen years of age. She only had a sixth grade education, and was of Irish-English extraction. She never learned to speak, read or understand the Greek language. Mr. Stergios was fifty-four years of age when he married her. They never had any children of their own and in 1957 by mutual consent and discussion, they decided that Nick would adopt a child from Greece. The child was his great-nephew, being the son of Penelope Neonakis, a niece. Her husband had been killed in battle, and she was a widow.

Early in 1958 Nick and Viola went to Chicago to visit the Greek Consulate about the final procedure necessary to secure the little boy. Viola did not understand the conversation because it was all carried on in Greek between the officials of the Consulate and her husband Nick. The necessary adoption papers were signed by him. Viola also signed a paper, although she could not read it and did not understand it. She was under the impression that both she and Nick were adopting the little boy. The paper she signed was only a consent to the adoption. A petition for adoption had previously been filed by Nicholas Stergios, through an attorney-in-fact in the town of Heracleon on the island of Crete in Greece. The child's mother appeared for him, and consented to the adoption. The necessary hearings were held in court and on February 22, 1958, the court entered adoption decree.

August 20, 1958, Nick Stergios departed this life at Sioux City. He had made a will some years prior to his death in which he gave certain properties to a niece, and bequeathed the remainder of his estate to his widow Viola. She filed the will. It was duly probated. In the course of time the estate was closed and the property divided between the widow and the niece in accordance with the terms of the will.

February 15, 1961, Stanley M. Corbett of Sioux City was appointed guardian of the property of Constantine Neonakis, and this action was started against Viola Stergios for the recovery of two-thirds of the property, on the theory that Neonakis was the heir of Nick Stergios, becoming such heir because the will was made long before the adoption.

II. Appellant urges this one proposition relied upon for reversal: "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece to take an interest in the estate of his adopting father."

Appellant raises four questions under the above general statement, which he calls Brief Points, as follows: "1. Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state constitutions, statutes and common law are in conflict, they are suspended or invalidated." "2. The treaty between the United States and Greece clearly allows citizens of Greece the right to inherit real and personal property located in any of the states and territories although state law may limit the period of time during which it may be held by the alien." "3. By virtue of the most-favored-nation clauses contained in the Treaty between the United States and Greece, a Greek national is entitled to the benefit of treaties which may be even more liberal than the Greek treaty." "4. Treaties must be interpreted liberally so as to give effect to all rights which may reasonably be claimed thereunder."

III. In order to clarify the situation as between the treaty and our statutory provisions a brief legislative history is advisable. Such statutory provisions appear in chapter 567 denominated "Rights of Aliens." What is now section 567.1 was adopted in 1868 and has been carried in practically the same form in our various Codes throughout the years. In general the section provides that nonresident aliens may hold a devise or a distribution un-

der a will for a period of 20 years. It limits the holding of nonresident alien to 320 acres of land and places no restriction upon personal property.

Various implementing sections were adopted in later years, some appearing first in the Code of 1897 and later Codes, and another section appeared first in the Code of 1913. Considering the chapter incomplete the General Assembly in 1951 adopted section 567.8 pertaining to nonresident aliens which became effective July 4, 1951. It provides—"Aliens' inheritances. 1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States *is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions* as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. 2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1." (Emphasis ours.)

There was offered in evidence and made a part of the record a document known as "TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF GREECE." It was entered into between the two nations in 1954. It pertains to many matters and contains 26 articles.

Article I provides: "Each party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of the nationals and companies of the other party."

Article VIII provides in part: "Neither party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other party • • • "

Article IX pertains specifically to the ownership of property of the nationals of the respective countries in the other country. Section 1A states: "In the case of nationals • • • of Greece the acquisition by purchase, *or otherwise*, of ownership rights in land, buildings, and other immovable property within the territories of the United States, shall be dependent upon the applicable laws of the *states*, • • • of the United States of America within which such property is located." Section 1B provides: "In the case of nationals • • • of the United States of America the right to acquire by purchase, or otherwise, • • • land, buildings, and other immovable property within the territories of Greece, *shall be subject to restrictions which Greece may consider it necessary to*

*impose on the right of aliens to acquire by purchase, or otherwise,* • • • such property in specific frontier and coastal areas." (Emphasis supplied.)

"2. Nationals and companies of either party shall be permitted freely to dispose of property within the territories of the other party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

"3. Nationals and companies of either party shall be accorded within the territories of the other party national treatment with respect to disposing of property of all kinds."

Article XXIV

"1. The term 'national treatment' means treatment accorded within the territories of a party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such party. *The term does not imply immunity from the laws and regulations of a party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both parties.*" (Emphasis ours.)

"2. The term 'most-favored-nation treatment' means treatment accorded within the territories of a party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products,

vessels or other objects, as the case may be, of any third country."

Section 567.8 is specific on the matter of reciprocal rights of citizens of the United States and citizens of contracting countries. The importance of reciprocity is emphasized by the terms and conditions of the section. It has been recognized by the Supreme Court of the United States in Clark v. Allen, 331 U.S. 503, 67 S. Ct. 1431, 91 L. Ed. 1633, in the following language: "The argument is based on the fact that under the statute the right of non-resident aliens to take by succession or testamentary disposition is dependent upon the existence of a reciprocal right on the part of citizens of the United States to take personalty on the same terms and conditions as residents and citizens of the other nation. The argument is that by this method California seeks to promote the right of American citizens to inherit abroad by offering to aliens reciprocal rights of inheritance in California. Such an offer of reciprocal arrangements is said to be a matter for settlement by the Federal Government on a nation-wide basis. * * * Nor has California entered the forbidden domain of negotiating with a foreign country * * *. What California has done will have some incidental or indirect effect in foreign countries. But that is true of many state laws which none would claim cross the forbidden line." The decision approved the reciprocal right theory.

IV. Under brief points 1 and 2 appellant contends the trial court erred in that treaties between the United States and foreign governments are the supreme laws of the land and that in fact the provisions of the treaty and the provisions of 567.8 were in conflict and the treaty

superseded the terms of 567.8. Appellant contends under Article IX, Section 2, nationals of Greece were permitted to freely dispose of property in Iowa depending on the provisions of Section 567.1. In the first place the provision of the treaty which requires reciprocal rights as between the nationals of the two contracting countries supersedes any other and later provisions. In Article XXIV, Section 1, of the treaty we find a provision explaining and to a certain extent nullifying the provisions of Article IX, Section 2, where it states: "The term 'national treatment' means treatment accorded within the territories of a party upon terms no less favorable than the treatment accorded therein, in like situations, the nationals of such parties. The term does not imply immunity from the laws and regulations • • • of both parties."

Appellant emphasizes disposal of property. He ignores the fact that before the ward can own and dispose of the property he must acquire it according to: 1. Laws of Iowa. 2. Reciprocal provision of treaty. 3. By carrying the burden of proof as to all facts.

(1, 2) In the case at bar the matter of alien ownership of property is covered by chapter 567. The laws of the State of Iowa are not in conflict with the treaty as a matter of law, in connection with the case at bar. It is a question of fact. In Article IX, Section b, the Kingdom of Greece reserves the right to restrict the right of aliens to acquire by purchase or otherwise, property in specific frontier and coastal areas. Constantine lived in a frontier and coastal area. This is a factual situation and is not a technical legal question. This is the point at

which the trial court held appellant had not carried his burden of proving certain facts in the case. The facts appellant failed to prove were either that Greece had not imposed conditions on United States nationals on the island of Crete in Greece, or if some restrictions had been placed on United States nationals, were they such as interfered in any manner with the provisions of Section 567.8. It was at this point in the treaty Greece reserved the right to put restrictions on United States nationals. Did they or did they not put on restrictions? The record is silent as to these facts. The primary question, and the one of first importance, *of reciprocal rights,* has been clearly emphasized in several Iowa decisions in which the question of inheritance taxes was involved. Inheritance tax is fixed at 20 per cent on property passing under a will to, or inherited by aliens. Code of Iowa, section 450.11, I. C. A.

We have held if United States nationals are entitled under the laws of another contracting country, or by treaty with such country, to the same inheritance tax percentages as nationals of the contracting country, we will only charge the alien the same percentage in our state. McKeown v. Brown, 167 Iowa 489, 149 N. W. 593; In re Moynihan's Estate, 172 Iowa 571, 151 N. W. 504, 154 N. W. 904, L. R. A. 1916 D, 1127, 1129; Brown v. Peterson, 185 Iowa 314, 170 N. W. 444.

(3) If there is an unreconcilable conflict between sections 567.1 and 567.8, the late enactment will control. State v. Blackburn, 237 Iowa 1019, 22 N. W. 2d 821; Iowa-Nebraska Light & Power Co. v. City of Villisca, 220 Iowa

238, 261 N. W. 423; State v. Harper, 220 Iowa 515, 258 N. W. 886; 82 C. J. S. Statutes § 368, page 839.

In the case at bar this is a reasonable development, as there have been many changes among the relationship of people and nations, and as to statutes and treaties between 1868 and 1954.

(4) V. Under brief point 3 appellant contends his ward is entitled to some type of benefits by reason of the most-favored nation clause in the treaty. A peculiar situation pertains to the treaty as to most-favored nation treatment.

The treaty with Greece provides for most-favored nations treatment in regard to only certain subjects in the treaty. Among the 26 articles of the treaty providing for most-favored nations treatment are only Articles II, VI, VII, XII, XVII, XIX, and XXI and XXIV.

*There is no such most-favored nations provision in Article IX of the Friendship Treaty with Greece.* This is the article which plaintiff-appellant attempts to apply in seeking relief from the court. The other articles specifically spell out when the most-favored nations provision is to apply. Since Article IX contains no such provision, we can only assume that Congress did not intend to apply the most-favored nations provision to this article.

The German Treaty in Article XI specifically refers to the most-favored nations treatment in disposing of property. This is different than the Greek Treaty which does not mention such treatment. Since the treaties were enacted at approximately the same time, we can only assume that Congress intended that as far as the Greek

Treaty is concerned the most-favored nations treatment would not apply to Article IX.

We have here a different situation than the case of Santovincenzo v. Egan, 284 U. S. 30, 52 S. Ct. 81, 76 L. Ed. 151, cited in plaintiff-appellant's Brief. There the treaty specifically contained a most-favored nations treaty provision with regard to the subject under consideration. This is different than the Greek Treaty as far as Article IX is concerned. It would be wrong to apply the most-favored nations treaty clause to the pertinent article of the Greek Treaty when it contained no such provision. This would give it an application broader than intended.

The quotation from the Friendship Treaty with Greece on page 28 of plaintiff-appellant's Brief is apparently from the preamble of this treaty, and does not refer to specific articles as they appear in the treaty.

(5) VI. The fourth brief point of appellant is that treaties should be interpreted liberally so as to give effect to all rights which may reasonably be claimed thereunder. This theory of liberal treatment is considered in Kolovrat v. Oregon, 366 U. S. 187, 81 S. Ct. 922, 6 L. Ed. 2d 218; Doehrel v. Hillmer, 102 Iowa 169, 71 N. W. 204. Liberal interpretation is all right as to doubtful clauses, but it must not change the meaning of a treaty.

In the case of Doehrel v. Hillmer, supra, we said: "Where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it and the other liberal, the latter is to be preferred."

This theory is correct where two constructions are possible, but in the first place there are no two construc-

tions to be differentiated in the case at bar, and in the second place the theory of liberality does not reach to the point of changing the clear meaning of treaties and statutes. We are not faced with the dilemma in the instant case.

A treaty between nations is dual in purpose. It establishes broad political and commercial rights as between the governments of the two nations. It also grants privileges, rights and obligations between the citizens of each nation, commonly known as nationals. 87 C. J. S. Treaties §§ 1 and 2; 52 Am. Jur., Treaties, sections 1 and 4.

(6) In a judicial construction of a treaty the same general rules apply as pertain to contracts and statutes. As in such cases, the intention of the parties shall have primary consideration. 52 Am. Jur., Treaties, section 12. In re Anderson's Estate, 166 Iowa 617, 147 N. W. 1098, 52 L. R. A., N. S., 686.

As pertaining to the case at bar some of the statements in Am. Jur., supra, are relevant. "* * * a treaty should be given such a construction as will avoid unjust and unreasonable conclusions * * * and such as tends to the common advantage of the contracting parties * * * but not such as will put aliens on a more favorable footing than our own citizens." Also "The courts are not required to * * * place an unreasonable interpretation on it, for the purpose of securing to foreigners privileges which are denied to citizens of this country."

(7) VII. Recapping briefly. The trial court found plaintiff had not carried the burden of offering sufficient evidence to comply with terms of section 567.8. The court

correctly states it cannot be presumed reciprocal rights exist; proof must be introduced.

Subsection (a) provides nationals of Greece may acquire by purchase, or otherwise (like inheritance) the ownership of property in accordance with applicable laws of States within which the property is located. This right is definite and specific.

Subsection (b) provides nationals of the United States may acquire property in Greece by purchase, or otherwise, but such acquisition "*shall be subject to restrictions which Greece may consider it necessary to impose on the rights of aliens * * * in specific frontier and coastal areas.*"

Appellant failed to carry the burden of proof as to restrictions, if any, imposed by Greece; or if none, the fact that there were none.

(8) There is complete lack of reciprocity under Code section 567.8, I. C. A. Professor Boyd worded it succinctly, and we believe correctly, in his article in 47 Iowa Law Review, supra, in following language: "The language of section 567.8 of the Iowa Code (I. C. A.) permits only two alternatives; the alien residing in a foreign country can either take real or personal property by succession on equal terms with residents and citizens of the United States or he can take nothing."

(9) VIII. The decision of the trial court was also based upon the fact that there is a lack of reciprocity as follows: In Iowa there appears in section 600.6, Code of Iowa, I. C. A., the following provisions: "Status of

the adopted child. Upon the entering of such decree, the rights, duties, and relationships between the child and parent by adoption shall be the same that exist between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and children born in lawful wedlock."

A duly verified copy of the Greek civil law pertaining to adoption was offered in evidence. A portion of Article 1643 of chapter 13, pertaining to adoption provides as follows: "The adoptive parent does not have any inheritance rights over the adopted child."

This is not reciprocity as between the citizens and nationals of the two countries. The provisions are contrary to each other.

The decision of the trial court is affirmed.

Affirmed.

HAYS, LARSON, THORNTON and STUART, JJ., concur.

GARFIELD, C. J., and THOMPSON, SNELL and MOORE, JJ., dissent.

GARFIELD, Chief Justice (dissenting).

I must dissent.

Plaintiff-appellant states a single proposition he relies on for reversal—that the trial court erred in holding the treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father.

In an able brief plaintiff cites Article VI of the federal constitution, three decisions of the supreme court, our own case of Opel v. Shoup, 100 Iowa 407, 423, 69 N. W. 560, 37 L. R. A. 583, and the article by Professor Boyd in 47 Iowa Law Review 105, 117, to which the majority refers, as authority for the point that treaties between the United States and foreign governments are the supreme law of the land and insofar as state statutes are in conflict therewith they are suspended. To like effect are Doehrel v. Hillmer (Ladd, J.), 102 Iowa 169, 171, 71 N. W. 204, and In re Klug's Estate, 251 Iowa 1128, 1136, 104 N. W. 2d 600, 604.

The annotation in 4 A. L. R. 1377, 1383-4, cites a long list of decisions, including many others from Iowa, for the point plaintiff makes. Additional, more recent, precedents are cited in Anno. 134 A. L. R. 882, 885.

The article by Professor Boyd, supra, states: "Because treaties are given supremacy over state laws by the federal constitution, restriction such as Iowa has placed on rights of nonresident aliens are of no effect when in conflict with more liberal treaty provisions."

Plaintiff's principal reliance is upon Article IX, 2, of the treaty between the United States and Greece which provides: "2. Nationals and companies of either party shall be permitted freely to dispose of property within the territories of the other party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition."

Plaintiff argues this provision, means that if a Greek national is prevented by his alienage from acquiring by succession property in a state in the same manner an American national may acquire it, the Greek shall be permitted to dispose of the property within five years. In other words, it is plaintiff's contention that Article IX of the treaty provides Greeks shall be able to acquire property in the United States but the states may place restrictions on its acquisition. And if they do, the Greek shall have up to five years to dispose of his property.

The article by Professor Boyd in 47 Iowa Law Review 105, 116-7, refers to a number of recent treaties of "Friendship, Commerce and Navigation," as this treaty is designated, between the United States and a foreign country which "have required that the alien beneficiaries dispose of the property within five years."

An article by Professor Boyd in 51 Michigan Law Review 1001, 1016, states: "The predominant treaty right granted to aliens is a qualified one. The alien is allowed a specified period of time in which to liquidate the realty and remove the proceeds without restraint or interference from the country in which it is situated. By this method the states are left to determine their own policies concerning the holding of realty by aliens and at the same time the alien is allowed the market value of the property and forfeiture is avoided."

Professor Boyd observes at page 118 of his article, supra, in the Iowa Law Review, "It is often said that treaties are to be liberally construed in order to effectuate the spirit of the nations' agreement."

The United States supreme court has said: "where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and the other liberal, the latter is to be preferred." (citation). Hauenstein v. Lynham, 10 Otto 483, 487, 100 U. S. 483, 487, 25 L. Ed. 628, 629. Doehrel v. Hillmer, supra, 102 Iowa 169, 172, 71 N. W. 204, 205, quotes this with approval.

If Article IX, 2, of the treaty here is fairly susceptible of the meaning plaintiff ascribes to it, and I think it is, it seems clear the restriction on ownership of property contained in our Code section 567.8, on which the majority decides this case, is suspended or rendered ineffective by the treaty unless the Greek national attempts to hold the property longer than five years. Plaintiff appears to have a valid claim under the terms of this treaty to the property in controversy here. The more restrictive and conflicting provisions of our Code section 567.8 are ineffective as to plaintiff's ward and plaintiff is not required to prove the existence of reciprocal rights as the statute contemplates.

I think Doehrel v. Hillmer, supra, 102 Iowa 169, 71 N. W. 204, and Ahrens v. Ahrens, 144 Iowa 486, 489, 123 N. W. 164, Am. St. Rep., tend to support this view. The Ahrens opinion states, "That the right to sell carried with it the ownership as a necessary incident to the power of sale is held by all the authorities."

I understand the principal basis of the majority's decision is plaintiff's failure to prove that under Greek law no restriction not reciprocal is placed on the right of nationals of the United States to inherit property in

Greece and we are told plaintiff had the burden to establish such reciprocal right. It is true our Code section 567.8, subd. 2, I. C. A., so provides. However, the treaty contains no such provision and it is "the supreme law of the land." The requirement of our statute is more restrictive than the provisions of the treaty and they control. The effect of the majority opinion is that more restrictive provisions of section 567.8, subd. 2, are made to supersede the treaty.

I would reverse.

THOMPSON, SNELL AND MOORE, JJ., join in this dissent.

## APPENDIX II.

### Judgment and Decree of District Court of Iowa in and for Woodbury County Dated October 18, 1962

JUDGMENT AND DECREE

This matter came on for hearing before the Court on July 6, 1962. The plaintiff appeared by his attorneys, Gleysteen, Nelson, Harper, Kunze & Eidsmoe, by Robert R. Eidsmoe and Allan J. Carew, and the defendant appeared personally and by her attorneys, H. A. McQueen and Phillip S. Dandos; and the Court, having heard the evidence and the arguments of counsel for the respective parties, having examined the exhibits admitted in evidence, and the file, and being well and fully advised, FINDS:

## FINDINGS OF FACT

The plaintiff is the duly appointed and acting Guardian of the property of the minor, Constantine Neonakis, having been so appointed as such by this Court on February 15, 1961. The minor is a resident of the country of Greece.

The defendant is now, and has been at all times material hereto a resident of Sioux City, Iowa. She is the widow of Nick Stergios, who died a resident of this county on August 20, 1958, being at that time 66 years of age, and whose estate was probated in this court as No. 22041 Probate.

The defendant and the decedent, Nick Stergios, were married when the defendant was 18 years of age. She is approximately 34 years of age now, so the marriage occurred approximately 16 years ago or about the year 1946. There were no children born of this marriage, and during the marriage and particularly in 1956 the defendant and her husband discussed adopting a child. Her husband was of Greek extraction and spoke both the Greek and English languages. The defendant speaks English, but she does not speak, read or understand Greek, and her education was limited to completion of the Sixth Grade. It appears that after some discussion with her husband about the adoption of a child which she states she thought would live with them, she and her husband in about the year 1958 went to the Greek Consulate in Chicago where certain papers were signed by her "so we could have the baby." The evidence showed that while visiting the Greek Consulate all of the conversation was in Greek, except for that which she had with her husband.

The defendant testified in this case that she signed the papers with reference to the adoption of the minor herein because she thought she would be the child's mother, and that she would not have signed if she had known it would be otherwise.

As a result of the execution of the papers at the Greek Consulate in Chicago by defendant and her husband, legal proceedings were commenced in Greece for the adoption of the minor herein by the decedent alone, and on February 22, 1958 a judgment of adoption was issued by one Stavros Tousas, President of the Court of First Instance of Heraklion, in Greece, whereby the minor herein, then being three years of age, was adopted to the decedent, alone. (Exhibit "3").

Shortly after making the trip to Chicago, the decedent became ill, and as herein above stated he died on August 20, 1958. The minor child, who was the son of Penelope Neonakis, a niece of decedent, was never brought to this country.

The decedent herein died testate, and his will, which is a part of the record herein, dated October 24, 1954, left certain designated real property "to my beloved ward, Eleftheria Stergios," and all other real and personal property to his spouse, the defendant herein.

The plaintiff predicates this action upon the provisions of Sec. 600.6 of the 1962 Code of Iowa, which gives an adoptive child the right to inherit property the same as a natural child, and Sec. 633.13 which provides that a legitimate child born after the making of a last will who is not provided for by any settlement and neither pro-

vided for nor mentioned in such will, shall have the right to inherit the same interest in the parent's real and personal property as though no will had been made, and provides for the taking of such share ratably from the interest of heirs, devisees and legatees. It is conceded that this section applies as well to after-adopted children as to after-born children.

The estate of the decedent has been fully probated and the minor herein was not named as an heir or beneficiary, has not been included in the distribution thereof, and during the course of the probate proceedings no Guardian Ad Litem was appointed for him at any stage of the probate of the estate.

The prayer of the plaintiff is that he be permitted to recover on behalf of his ward, the minor, a two-thirds interest in the estate of the decedent.

The defendant, in her pleadings filed herein, has denied the material allegations of the plaintiff's Petition, raises the question of consent on her part, and alleged fraud in the procuring of her signature to the instruments signed by her in the office of the Greek Consulate.

The ultimate issue of this case, then, is whether the minor, Constantine Neonakis, is entitled to share in the estate of the decedent, Nick Stergios, despite the provisions of the decedent's will.

Preliminary to the decision of that issue is the question of whether the judgment of adoption issued by the Greek Court is recognizable as valid. If it is to be so recognized, the question of whether the plaintiff is en-

titled to share in the estate in view of the limitations imposed by Sec. 567.8 of the 1962 Code of Iowa must be decided.

## CONCLUSIONS OF LAW

It is generally held that the status created by an adoption in a state having jurisdiction to create it, will be recognized by the courts of another state to such an extent, at least, as is not inconsistent with the laws and policy of the latter.

> (1 C. J., Sec. 138, P. 1402; Cook v. Estate of Todd, 249 Ia. 1277 (1958), citing Schick v. Howe, 137 Ia. 249.)

Further, when confronted with judgments of a foreign country, the courts have held that such judgment, rendered by a competent court in a proceeding in rem or affecting status is conclusive, and may not be examined on the merits unless there was fraud in securing it.

> (46 A. L. R. 441, and cases cited.)

The Code of Iowa, Sec. 622.55, sets out the requirements relating to the authentication of copies of records and proceedings in the Courts of a foreign country prior to their admission in evidence in Courts of this state. The translation of the record of adoption in this case, at page 5 of Exhibit "3", shows this record fully meets the requirements of the Iowa statute.

The question remains as to whether the defendant, Viola Stergios, has shown that her consent to the adoption of the minor by her husband was obtained through fraud, consent of the spouse of the adopting party being a pre-

requisite to adoption, according to Greek law. (Exhibit No. "7", Interrogatory and answer No. 19.)

Before fraud could be found on the part of the deceased husband in obtaining his wife's consent, the proof thereof required by the law of Iowa must be more than that of a mere preponderance, and must be established by clear, convincing and satisfactory evidence.

When it is considered that the law of Greece prohibits the adoption by any person less than 50 years of age (Exhibit No. "7", Interrogatory and answer No. 16), and that the defendant herein did not qualify under the law because of her age at the time she consented to the adoption by her husband, it then becomes apparent why she, too, did not then join as an adopting party. But this does not lead to the conclusion that her husband was committing fraud upon her or had misled her in leading her to believe that she would be the mother of the child. He was acting upon the advice of his attorney, now deceased. It is more logical to presume that the attorney and the defendant's husband were pursuing the first step in obtaining a child for the defendant, of which she could be the mother, which she stated she wanted, by completing the adoption in Greece by the husband and bringing the child to this country where the defendant could then adopt in accordance with our laws, regardless of the fact that she was under 50 years of age. The plan may or may not have been in the mind of the defendant's husband, but certainly where such an obvious explanation of his actions is apparent, the court could not on the basis of the evidence introduced, find fraud on the part of the decedent, Nick Stergios. It must be remembered that de-

fendant testified her husband became ill after the trip to Chicago and died in August of the same year, thus if his plans were as stated above, they were interfered with by his illness and death.

The court concludes that the judgment of the Greek Court adopting the child to Nick Stergios is conclusive upon this court, no fraud having been shown in its procurement.

Having so concluded, the question remains as to whether the minor child is entitled to share in the estate of the decedent in view of the restrictive provisions and procedural requirements of Sec. 567.8 of the 1962 Code of Iowa, which provides that the right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents, and which further provide similarly as to personal property, placing the burden in each instance upon such non-resident aliens to establish the fact of existence of the reciprocal right referred to in the statute.

Plaintiff places reliance upon the provisions of a 1951 treaty between the United States and Greece (Exhibit "5", and particularly ART. IX, Subsection 2 as answering defendant's contentions that the burden of proof required by Sec. 567.8 of the Iowa Code was not met, but this par-

ticular subsection deals not with the acquisition of property, but with its disposition after having been acquired. The Iowa statute prevents a taking of such property, which this Court concludes to be synonymous with the acquisition of property, except under the circumstances stated in the statute relative to reciprocity which must be proven by the plaintiff.

A reading of ART. IX, Subsection 1(a), shows that with respect to the acquisition by nationals of Greece of immovable property located in the United States, the laws of the states are effective and recognized by the treaty. This recognition will extend to and include the section of the law of the State of Iowa with which we are concerned here, Sec. 567.8, and the treaty, therefore, does not make ineffective or attempt to nullify that law, nor the burden placed upon the plaintiff by that law. This section of the treaty appears to the court to be an obvious recognition of the rights of the states to make, construe and enforce laws governing the rights of nationals of Greece to acquire immovable property located within the states of the United States.

ART. IX, Sub-section 1(a) and (b) of the treaty (Exhibit "5") merely provide that in the case of nationals of Greece the acquisition of immovable property located within the United States shall be dependent upon the applicable laws of the state within which the property is located; and, in the case of nationals of the United States, that the right to acquire property within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the rights of aliens to acquire immovable property.

These provisions are not, as the court reads them, an indication that the reciprocal rights contemplated by Sec. 567.8 of the Iowa Code exists, but strongly indicate that the laws of the parties to the treaty, though they may be entirely different will be effective with respect to the acquisition of immovable property.

The Court is unable to find that the plaintiff has carried the burden imposed by the statute in question. The presumption may not be indulged that such reciprocal rights on the part of citizens of the United States do exist, but as stated, the Court can so find only after sufficient proof thereof has been introduced as required by the section. Additionally, some affirmative evidence on the part of the plaintiff was introduced tending to show that such reciprocal rights may not in fact exist. (Exhibit No. "7", Interrogatory and Answer No. 36.)

*It is, therefore, ordered, adjudged and decreed by the Court* that the petition of the plaintiff be, and it is hereby dismissed.

Costs taxed to plaintiff.

Plaintiff duly excepts.

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## APPENDIX III.

**Section 567.1, Code of Iowa, 1958**
**Section 567.8, Code of Iowa, 1958**

"567.1 ACQUISITION OF REAL ESTATE. Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which

is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

"The widow and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

"Nothing in this section contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

"This chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings for forfeiture have been commenced."

"567.8 ALIENS' INHERITANCES. 1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as

residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents.

"2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

"3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property."

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## APPENDIX IV.

### Treaty of Friendship, Commerce and Navigation between the United States of America and the Kindgdom of Greece

The United States of America and the Kingdom of Greece, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of promoting their economic development and the general welfare of their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements which facilitate and encourage, on bases mutually advantageous, the flow of investment capital and of technology and the further development of productive enterprise and commercial intercourse, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

The Honorable John E. Peurifoy, Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece,

and

His Majesty the King of the Helfenes:.

His Excellency Sophocles Venizelos, Prime Minister and Minister of Foreign Affairs,

who having communicated to each other their full powers found in good and due form, have agreed upon the following articles:

Article VIII.

Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, art or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology needed for economic development.

Article IX.

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to acquiring by purchase or otherwise and with respect to owning, leasing, occupying and using land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, sci-

entific, educational, philanthropic and professional activities, and for residential and mortuary purposes, subject to the following limitations:

(a) in the case of nationals and companies of Greece the acquisition by purchase, or otherwise, of ownership rights in land, buildings, and other immovable property, within the territories of the United States, shall be dependent upon the applicable laws of the States, Territories and possessions of the United States of America within which such property is located; and

(b) in the case of nationals and companies of the United States of America the right to acquire by purchase, or otherwise, and the right to lease, occupy and use land, buildings, and other immovable property, within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the right of aliens to acquire by purchase, or otherwise, and to lease, occupy and use such property in specific frontier and coastal areas.

2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds.

## Article XXIV

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

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In the
# Supreme Court of the United States

.....Term, 1964
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## MOTION TO DISMISS

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July, 1964

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**In the**
# Supreme Court of the United States

.....Term, 1964

No. .....

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant.*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## MOTION TO DISMISS

Appellee moves to dismiss the appeal of the appellant to the United States Supreme Court from a decision of the Supreme Court of Iowa, No. 51095, dated February 11, 1964, entitled Stanley M. Corbett, Guardian of the Property of Constantine Neonakis, a minor, Appellant, vs. Viola Stergios a/k/a Viola Steryiakis, Appellee, and printed in 126 N. W. 2d 342.

## OBJECT OF MOTION

The object of appellee's motion is to dismiss appellant's appeal in this matter from the State Court on the

grounds: (1) that this appeal does not present a substantial federal question, and (2) that the federal question sought to be reviewed was not properly raised in the Trial Court and on appeal to the Supreme Court of Iowa.

## FACTS ON WHICH MOTION FOR DISMISSAL IS BASED

### A. The appeal does not present a substantial federal question.

The Iowa law as provided in Section 567.8, Code of Iowa (set out in full in Appendix III, Appellant's jurisdictional statement) provides that non-resident foreign aliens may inherit property in Iowa upon the same terms and conditions as a citizen of the United States if a reciprocal right upon the part of the United States citizen to inherit exists in the country of the alien's residence. The code section places the burden of proving the existence of such reciprocal right upon the non-resident alien seeking to inherit property in Iowa.

In the trial of this case the issue raised was whether the Appellant's ward, a non-resident foreign alien of a coastal area in Crete, Greece, had met the burden of this code section as a matter of fact. The Trial Court found in its Judgment and Decree (set out in full in Appendix II, Appellant's Jurisdictional Statement) that the Appellant had not carried the burden imposed by the Iowa statute. The Trial Court could not make a finding that the Appellant had carried the burden because sufficient proof required by this statute was not introduced in the trial.

On appeal the Iowa Supreme Court affirmed this finding of the Trial Court. In the opinion of the Iowa Supreme Court (set out in full in Appendix I, Appellant's Jurisdictional Statement) it was a question of fact which was herein involved. The Iowa Supreme Court specifically notes that the Trial Court held that the Appellant had failed to carry the burden of proving certain facts. The Appellant failed to prove that Greece, the foreign country herein, had not imposed certain conditions on United States nationals inheriting in a certain area in Crete, Greece, or if some restrictions had been placed, whether they were such as interferred in any manner with the provisions of Section 567.8. The record is silent. The Iowa Supreme Court states in its opinion the law in quoting the Trial Court as follows:

> "The Court correctly states it cannot be presumed reciprocal rights exist; proof must be introduced."

The only question herein presented is one of fact, not law, and these facts the Iowa Courts were bound to decide. Was there evidence of such reciprocal rights? The Iowa Courts decided as a fact there was not. These facts the United States Supreme Court should not review on appeal. The question of facts presented in this case is not a federal question which need be reviewed. What proof was properly and sufficiently introduced is solely for the Iowa Courts to decide, based on their rules of evidence.

The Iowa Trial Court also found as a fact lack of reciprocity not only the matter of inheritance rights between citizens of the United States and certain parts of Greece specifically, a coastal area in Crete, Greece, but

also in matters concerning inheritance rights between adoptive parent and adoptive child. The Iowa Supreme Court notes in its opinion in this case that certain affirmative evidence introduced tended to show that reciprocity did not exist in matters of inheritance rights between adoptive parent and adoptive child. The Iowa Court notes that the Iowa law and that of Greece in this matter differs. This it makes an additional basis of its decision. This is again a fact question which the Iowa Courts decided and not one concerning a United States Treaty or law. Because it is merely a question of fact again, it does not present a substantial federal question for review by the United States Supreme Court.

**B. The federal question sought to be reviewed was not properly raised in the Trial Court and on appeal to the Supreme Court of Iowa.**

The Trial Court decided in this case that the appellant had failed to carry the burden of proof required by Section 567.8 of the Code of Iowa. That the Court cannot indulge in a presumption that the reciprocal rights exists, but must have some evidence of such rights.

That appellant on appeal to the Supreme Court of Iowa assigned as sole ground of error, to wit:

> "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father." (page 9 of appellant's Jurisdiction Statement to this court).

The Supreme Court of Iowa sustained the Trial Court in its decision and did not construe the treaty as to den.

plaintiff appellant's ward from taking an interest in Iowa real estate.

The appellant now for the first time assigns as error and requests that a court construe the treaty as nullifying Section 567.8 of the Code of Iowa per se.

It is elementary law that appellant should have presented this question to the Iowa courts for decision before this Court should consider the matter.

This appellant is attempting to change the issues in the Trial Court and the Supreme Court of Iowa. The Trial Court did not nullify the said treaty in any respect, and neither did the appellant or the Iowa Courts properly raise a federal question.

Respectfully submitted,

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July, 1964

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In the
# Supreme Court of the United States

October Term, 1963

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## BRIEF OPPOSING MOTION TO DISMISS APPEAL

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July, 1964

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# In the
# Supreme Court of the United States

October Term, 1964

No. 1215

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## BRIEF OPPOSING MOTION TO DISMISS APPEAL

On July 9, 1964, Appellee filed her Motion to Dismiss Appeal pursuant to Rule 16, Revised Rules of the Supreme Court of the United States. Pursuant to that same rule Appellant submits the following Brief Opposing Motion to Dismiss Appeal.

**A. Appellee incorrectly asserts that Appellant's appeal does not present a substantial federal question.**

Appellee argues in Division A of her Motion to Dismiss Appeal that the only issue determined by the Iowa Supreme Court on the appeal of this cause was whether

Appellant had introduced sufficient evidence as to whether reciprocal rights of inheritance existed between the Kingdom of Greece and the State of Iowa. Appellee contends on page 2 through page 4 of her Motion to Dismiss Appeal that since the trial found that Appellant had not introduced evidence on whether reciprocal rights of inheritance exist, and this holding was affirmed by the Iowa Supreme Court, no substantial federal question is presented to give this Court jurisdiction for an appeal under 28 U. S. C., Section 1257(2).

There can be no question that Section 567.8, Code of Iowa, 1958 (set out in full in Appendix III, Appellant's Jurisdictional Statement) provides that nonresident foreign aliens may inherit property in Iowa only if they prove the existence of a reciprocal right upon the part of United States citizens to inherit in the country of the alien's residence, which in this case is Greece. Also, there can be no question that Section 567.8 of the Iowa Code places the burden of proving such reciprocal rights upon the Appellant.

Appellant made no attempt to introduce evidence of reciprocal rights, but chose to stand on rights granted in the treaty between the United States and Greece (the pertinent parts of which are set out in Appendix IV of Appellant's Jurisdictional Statement). Appellant contended at the trial and ever since, that the treaty, and particularly Article IX thereof, nullified Section 567.8 of the Code of Iowa.

For Appellee to argue that the Iowa Supreme Court simply determined that Appellant failed to prove a factual

question, Appellee must necessarily ignore a substantial portion of the opinions of the Courts below. Before the Courts below could determine that Appellant had not proven the existence of reciprocal rights, both the Trial Court and the Iowa Supreme Court had to make the determination that the treaty did not nullify the requirement of Section 567.8, Code of Iowa, 1958, that Appellant prove the existence of reciprocal rights. As can be seen by an examination of the Judgment and Decree of the Trial Court set out in Appendix A of Appellant's Jurisdictional Statement, and particularly pages A24 and A25 thereof, the Trial Court examined the treaty and the statute and found that the state statute was not nullified by the treaty. Since the Trial Court found that the requirement of Section 567.8 was not nullified by the treaty, the Trial Court held that Appellant must prove the factual question as to the existence of reciprocal rights of inheritance. Since Appellant made no attempt to prove the existence of reciprocal rights, but relied on treaty rights as nullifying Section 567.8, Code of Iowa, the Trial Court dismissed Appellant's Petition.

This same reasoning was followed by the Iowa Supreme Court. Before it could affirm the Trial Court's finding that Appellant had not fulfilled his burden of proof under Section 567.8, Code of Iowa, the Supreme Court of Iowa first determined that said section was not nullified by the treaty. As will be seen from an examination of the opinion of the Iowa Supreme Court in this cause, reported in ___ Iowa ___, 126 N. W. 2d 342 (1964), and set out in Appendix I of Appellant's Jurisdictional Statement, much attention was given by the Court to the ques-

tion of whether the treaty nullified Section 567.8, Code of Iowa. The discussion by the Iowa Supreme Court on this point is set out in pages A3 through A8 of Appendix I to Appellant's Jurisdictional Statement. The five man majority decided the treaty did not nullify the statute. The four man minority found that the treaty did nullify the necessity of proving reciprocal rights of inheritance (see pages A14 through A18 of Appendix I to Appellant's Jurisdictional Statement). The confusion of the majority in arriving at their conclusion on this point is best illustrated by the following statement taken from the Opinion (page A8 of Appendix I, Appellant's Jurisdictional Statement):

> "The laws of the State of Iowa are not in conflict with the treaty as a matter of law, in connection with the case at bar. It is a question of fact."

It would appear that in stating whether state statutes conflict with federal treaties is a question of fact, the majority of the Iowa Supreme Court has enunciated a new and radical principle of constitutional law.

Thus, before determining that a factual question was presented for review, both Courts below found that there was drawn into question the validity of Section 567.8, Code of Iowa, 1958, on the ground that is repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and Greece. The state courts found the statute to be valid. A substantial federal question is therefore presented giving rise to an appeal under 28 U. S. C., Section 1257 (2).

**B. Appellee incorrectly asserts that the federal question sought to be reviewed was not properly raised in the Trial Court and on appeal to the Supreme Court of Iowa.**

As set out on page 4 of the Motion to Dismiss Appeal, the Appellant on appeal to the Supreme Court of Iowa assigned as its ground of error the following:

> "The Court erred in holding that Treaty between the United States and Greece did not allow plaintiff's ward, a citizen of Greece, to take an interest in the estate of his adopting father."

What Appellee in her motion neglects to point out to this Court, however, is the various sub-points which were relied upon by Appellant in its appeal to the Iowa Supreme Court. As is set out by the opinion of the Iowa Supreme Court, specifically as shown on page A3 of Appendix I to Appellant's Jurisdictional Statement, there were four questions raised in support of the general ground of error, the first being:

> "1. Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state constitutions, statutes and common law are in conflict, they are suspended or invalidated."

The Iowa Supreme Court spent considerable time in discussing this point as will be seen by that portion of the opinion set out in pages A5 through A8, Appendix I to Appellant's Jurisdictional Statement.

The statement of Appellee on page 5 of her Motion to Dismiss Appeal that the Appellant is now for the first time raising the question of the validity of Section 567.8, Code of Iowa, is obviously in error. This issue was raised

in the Trial Court and was discussed in the Judgment and Decree of the Trial Court set out in Appendix II to Appellant's Jurisdictional Statement. At page A25 thereof, the Trial Court stated:

> "A reading of ART. IX, Subsection 1(a), shows that with respect to the acquisition by nationals of Greece of immovable property located in the United States, the laws of the states are effective and recognized by the treaty. This recognition will extend to and include the section of the law of the State of Iowa with which we are concerned here, Sec. 567.8, *and the treaty, therefore, does not make ineffective or attempt to nullify that law,* nor the burden placed upon the plaintiff by that law." (Emphasis ours.)

Thus, it can be seen that the question as to whether the treaty nullified Section 567.8, Code of Iowa, 1958, was raised in the trial of the cause, and the issue was squarely presented and discussed by the Trial Court in its Judgment and Decree, and by the Supreme Court of Iowa. The issue having been presented in the Trial Court and presented on appeal, it must be considered to have been properly raised for purposes of this appeal.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR, APPELLANT

*v.*

VIOLA STERGIOS, A/K/A VIOLA STERYIAKIS

*ON APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA*

## MEMORANDUM FOR THE UNITED STATES

### STATEMENT

By order of the Court dated October 12, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons stated below, we believe that it presents a substantial question of federal law.

Appellant, the guardian of the property of Constantine Neonakis, a non-resident minor and citizen of the Kingdom of Greece, instituted this suit in the District Court of Iowa in and for Woodbury County to reopen the estate of Nicholas Stergios, who had died testate in 1958 while a resident of Iowa (J.S.

App. A19).[1] Stergios' will, executed in 1954, had made no provision for Neonakis, his adopted son. Appellant alleged that under Iowa law[2] Neonakis was entitled to a two-thirds share of the estate, consisting of realty and personalty located in Iowa, because the adoption had taken place after the execution of the will (J.S. App. A19–A21). The relief sought was an order setting aside the final report in the estate proceedings and directing that the minor recover two-thirds of the value of the estate (J.S. App. A21).

The court dismissed the petition on the sole ground that appellant had not satisfied Section 567.8 of the Iowa Code, which provides that the right of a nonresident alien to take real or personal property located in Iowa by succession or testamentary disposition "upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real [or personal] property upon the same terms and conditions as residents and citizens" of the country of which such alien is a resident. The court found that appellant had not met the statutory burden (Sec. [illegible]8(2)) of establishing the existence of such a reciprocal right.

By a vote of five to four, the Supreme Court of Iowa affirmed. The majority rejected appellant's

[1] "J.S. App." refers to the appendix to the Jurisdictional Statement.

[2] See Iowa Code Annotated, secs. 600.6, 633.13, 636.31.

contention that the application of Section 567.8 to this case was limited by Article IX, section 2, of the 1951 Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece 1954(2) U.S.T. & O.I.A. 1829, T.I.A.S. No. 3057, which provides:

> Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

The majority reasoned that this provision, construed together with other provisions of the treaty, did not prevent Iowa from imposing the condition of a reciprocal right on the right of a non-resident Greek national to acquire property within the State (J.S. App. A8–A14). The dissenting Justices construed the treaty to provide that a non-resident Greek national who was prevented by State law from acquiring property by succession must be allowed at least five years within which to dispose of it, and ruled, as required by Article VI of the Constitution, that the treaty prevailed over the State statute (J.S. App. A15–A18).

## DISCUSSION

The Iowa courts have held that State laws of inheritance may be applied so as to defeat the right of a non-resident Greek national to take by succession real and personal property located within the State. This holding depends on a construction of a

treaty between the United States and Greece. That construction, in the view of both the Department of State and the Greek Government, is in error. Since the correct interpretation of the treaty is a matter of considerable importance to the United States in the conduct of its foreign relations,[3] we believe that review by this Court is warranted. Cf. *Kolovrat* v. *Oregon*, 366 U.S. 187, 191.

In letters to the Ambassador of the Kingdom of Greece (App. A, *infra*, pp. 7–9) and the Department of Justice (App. B, C, *infra*, pp. 10–13), the Department of State, which negotiated the 1951 Treaty on behalf of the United States, has expressed the view that, while the treaty does not guarantee "national treatment" with respect to rights of inheritance to non-resident Greek nationals, it does preclude the application of State law as a total bar to their inheritance of property located in the United States. In its opinion, the treaty guarantees that, irrespective of limitations imposed by State law, a Greek national shall enjoy the right, for a period of at least five years, freely to dispose of any property which he could have inherited if he were an American national.

The State Department's conclusion—which, on familiar principles, is entitled to great weight, *Kolovrat, supra*, at 194—is supported by the terms of the treaty. Article IX, section 1(a) (J.S. App. A29–A30) provides that Greek nationals shall be accorded "national treatment" with respect to the acquisition

[3] The Greek Government called to the attention of the Department of State the decision of the Iowa trial court and the then pending appeal to the Supreme Court of Iowa. See App., *infra*, pp. 7–8.

of "ownership rights in land, buildings, and other immovable property" within the United States, subject to the laws of the States in which such property is located.[4] Section 2 of Article IX, however, expressly provides that if a national of either party to the treaty, is prevented because of alienage from receiving national treatment with respect to the acquisition of property through testate or intestate succession, he shall have a period of at least five years within which "freely to dispose" of such property. This provision is applicable to the present case and limits the operation of the Iowa statute to bar the inheritance of appellant's ward. The reasoning of the Iowa Supreme Court (J.S. App. A8) that the second section applies only to the disposition of property which has been acquired in accordance with State law is contrary to the language and purpose of the treaty, which confers the right "freely to dispose of property * * * with respect to the *acquisition* of which * * * alienage has prevented * * * [a national] from receiving national treatment * * *." (Emphasis added.) See *Clark* v. *Allen*, 331 U.S. 508.[5]

[4] Section 1(b) of Article IX permits the Greek Government to restrict in some respects the "national treatment" accorded American nationals.

[5] Contrary to the statement of the Iowa Supreme Court (J.S. App. A8), there is no provision in the Treaty which "supersedes" Article IX, section 2. The Court's reliance on Article XXIV, section 1 (J.S. App. A8) is misplaced: that section states only that "national treatment" shall not be taken to imply "immunity from the laws and regulations of a Party *which apply in a non-discriminatory manner to nationals* * * * *of both Parties*" (J.S. App. A31). (Emphasis added.)

For the reasons stated, it is the view of the United States that this case presents a substantial question of federal law.

Respectfully submitted.

ARCHIBALD COX,
*Solicitor General.*

DECEMBER 1964.

## APPENDIX A

DEPARTMENT OF STATE,
*Washington, July 30, 1963.*

His Excellency ALEXANDER A. MATSAS,
*Ambassador of Greece.*

DEAR MR. AMBASSADOR: I refer to a note No. 108/ST/5 dated January 17, 1963 from the Chargé d'Affaires ad interim of Greece, calling attention to a case pending before the Supreme Court of Iowa on appeal from the district court of Iowa in and for Woodbury County, entitled:

> *"Stanley M. Corbett, Guardian of the property of Constantine Neonakis, a Minor, plaintiff-appellant,* v. *Viola Stergios a/k/a Viola Steryiakis, defendant-appellee."*

The case concerns the question of the right of a resident of Greece to inherit property in the United States under an Iowa statute requiring existence of a reciprocal right of inheritance upon the part of residents and citizens of the United States to inherit real property in Greece.

The Chargé d'Affaires' note requests that the Department of State cause to be submitted to the Supreme Court of Iowa the view of the Chargé d'Affaires that aside from the fact that under the Civil Law of Greece aliens are entitled to reciprocal rights of inheritance, as communicated on March 20, 1945 to the Department by the (then) Ambassador of Greece, the Treaty of Friendship, Commerce and Navigation be-

tween the United States and the Kingdom of Greece, signed at Athens on March 3, 1951, makes it unnecessary to prove reciprocal rights as required under the Iowa Code.

The Department of State confirms that on March 20, 1945 the Ambassador of Greece at Washington communicated to the Department the following statement regarding the question of reciprocal rights of inheritance:

> "In the question as to whether Sections 259, 259.1 and 259.2 of the California Probate Code applies to heirs and legatees, residents and citizens of Greece, the Greek Ambassador begs to certify the reciprocity defined in the above Sections of the California Probate Code is accorded citizens and residents of the United States, for the reason that according to the Civil Law of Greece aliens enjoy the same civil rights without any exception to hereditary rights.
>
> "Article 4 of the Greek Civil Law of the old one and the newest published on March '15, 1940, reads as follows:
>
> "'An alien enjoys the same civil rights as our citizens.'
>
> "The civil laws of Greece relating to inheritance where the citizens of other countries are involved, are inclusive and not exclusive. That is to say, practically all aliens, wherever they reside, are permitted to inherit from any person who leaves an estate there, and if there are alien heirs and non-residents of Greece, such heirs are expressly permitted to be represented by their Consuls and collect through them their distributive shares."

The Department is fully satisfied that reciprocal rights of inheritance exist under the laws of Greece.

With regard to the 1951 Treaty of Friendship, Commerce and Navigation, it is the view of the De-

partment of State that the intent of Article IX(1) is to accord national treatment to Greek citizens in respect of acquisition of real property through inheritance, subject to local laws which may limit the rights of aliens to *hold* real property. Article IX(2) sets a limitation upon this exception for state laws prohibiting alien ownership of realty by requiring that the alien be allowed five years in which to dispose of real property he has acquired through inheritance.

Under this interpretation, the Department would agree with the statement that the Treaty eliminates any necessity of proving reciprocity of treatment where the property in question is realty and thus subject to Article IX.

It is suggested that the Embassy may wish to bring the foregoing to the attention of the Iowa Court, together with a statement from the Ambassador to clarify, to the extent desired by the Court, the rights of residents and citizens of the United States to inherit in estates in Greece. It is not intended, of course, that this note should be interpreted as passing upon the merits of the case presently before the Iowa Court.

I regret the delay in replying to the Chargé d'Affaires' note but trust that the foregoing may be helpful in connection with this case.

Sincerely yours,

ABRAM CHAYES,
*The Legal Adviser*
(For the Secretary of State).

## APPENDIX B

DEPARTMENT OF STATE,
*Washington, October 26, 1964.*

The Honorable JOHN W. DOUGLAS,
*Assistant Attorney General,*
*Civil Division,*
*Department of Justice.*

DEAR MR. DOUGLAS: I refer to your letter of October 15, 1964, requesting the views of the Department of State on a question presented by the appeal from the Supreme Court of Iowa to the United States Supreme Court in the case of *Stanley M. Corbett, etc.* v. *Viola Stergios, a/k/a Viola Steryiakis* (Sup. Ct. No. 179). That question, as stated in appellant's jurisdictional statement is:

> Whether the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece nullifies the requirement of Section 567.8 of Iowa, 1958, that Appellant nonresident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate by intestate succession from his adopting father.

It is the view of the Department of State that the intent of Article IX (1) of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, signed at Athens on March 3, 1951, is to accord national treatment to Greek citizens in respect of the acquisition of real property through inheritance, subject to local laws

which may limit the rights of aliens to *hold* real property. Article IX (2) sets a limitation upon this exception for state laws prohibiting alien ownership of realty by requiring that the alien be allowed five years in which to dispose of real property he has acquired through inheritance. The Department of State is of the opinion that the Treaty eliminates any necessity of proving reciprocity of treatment where the property in question is realty and thus subject to Article IX.

The Department of State has expressed this view in an official communication to the Ambassador of Greece dated July 30, 1963, the text of which is enclosed.

Sincerely yours,

ANDREAS F. LOWENFELD,
*Acting Legal Adviser*
(For the Secretary of State).

(Enclosure: Text of Official Communication of July 30, 1963.)

## APPENDIX C

DEPARTMENT OF STATE,
*Washington, December 7, 1964.*

The Honorable JOHN W. DOUGLAS,
*Assistant Attorney General,*
*Department of Justice.*

DEAR MR. DOUGLAS: I refer to your letters of October 15 and October 29, 1964, in regard to a question presented by the appeal from the Supreme Court of Iowa to the United States Supreme Court in the case of *Stanley M. Corbett, etc.* v. *Viola Stergios, a/k/a Viola Steryiakis* (Sup. Ct. No. 179). In a subsequent telephone inquiry regarding this matter, you have requested the view of the Department of State as to the effect of Article IX of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, signed at Athens on March 3, 1951, on the acquisition of personal property by nationals of either country in the territory of the other.

Paragraph 2 of Article IX, although designed primarily to assure that aliens shall have the right to dispose of real property which they are not permitted to own under the law where the property is located, does not limit itself to real property. It relates to property in general. As applied to the question whether paragraph 2 accords any right with respect to the acquisition of property, the terminology of the paragraph is vague. It is, however, based upon the premise and intent that the aliens shall have the right,

in cases where because of alienage they are prevented from enjoying all the benefits that a national would enjoy in regard to the taking of title to property through inheritance or succession, to receive the property and to effect a disposition of it within a period of five years.

Attention is directed to the use of the term "succession" in paragraph 2, in the light of customary references to inheritance of real property and succession to personal property. While paragraph 2 does not state specifically that the aliens shall have national treatment with respect to the right to succeed to personal property, it appears that the granting of a right to effect a disposition within a specified period of *any* property to which they would succeed on a national treatment basis except for their alienage is indicative of a general intent that so far as possible they should be allowed to take property, or the proceeds from the disposition thereof, through testate or intestate succession.

Sincerely yours,

RICHARD D. KEARNEY,
*Deputy Legal Adviser.*

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# Supreme Court of the United States

OCTOBER TERM, 1964

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee*

## APPELLANT'S BRIEF

**Appeal from the Supreme Court of the State of Iowa**

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Cockle Printing Company—Law Briefs—Omaha, Nebr.

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# Supreme Court of the United States

OCTOBER TERM, 1964

No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee*

## APPELLANT'S BRIEF

**Appeal from the Supreme Court of the State of Iowa**

## OPINION BELOW

The Opinion and Judgment of the Supreme Court of Iowa affirming the decision of the Trial Court dismissing Appellant's Petition appears as *Corbett v. Stergios,* ..... Iowa ....., 126 N. W. 2d 342 (1964). (R. 42-55).

## JURISDICTION

The Opinion and Judgment of the Court below, (R. 42-55) was entered on February 11, 1964. Notice of

Appeal to the Supreme Court of the United States was filed on April 23, 1964 (R. 56-57). On January 18, 1965, the Supreme Court of the United States entered an Order noting probable jurisdiction and placing this case on the summary calendar (R. 58).

The jurisdiction of this Court rests on the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. C., Sec. 1257 (2).

This is an appeal from a final judgment of the highest Court of the State of Iowa, where is drawn in question the validity of Section 567.1 and Section 567.8, Code of Iowa, 1958, on the ground that they are repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and Greece. The Opinion and Order of the Iowa Supreme Court dated February 11, 1964, found the Iowa statute to be valid (R. 42-55).

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## TREATY AND STATUTES INVOLVED

This action involves the validity of Section 567.1, Code of Iowa, 1958, and Section 567.8, Code of Iowa, 1958. The full text of the two sections of the Iowa Code is set out in Appendix A, *infra*. The two sections of the Iowa Code are deemed repugnant to the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece, Aug. 3, 1951 (1954), 2 U. S. T & O. I. A. 1829, T. I. A. S. No. 3057. The text of the pertinent Articles of the Treaty is set out in Appendix B, *infra*.

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## QUESTIONS PRESENTED

I. Whether the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of Greece nullifies the requirement of Sections 567.1 and 567.8, Code of Iowa, 1958, that Appellant nonresident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate and personal property by intestate succession from his adopting father?

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## STATEMENT OF THE CASE

Appellee married Nicholas Stergios in March, 1946. No children were born of the marriage (R. 32). On October 20, 1954, Nick Stergios executed a Will naming as his sole beneficiaries, his wife, the Appellee, and a niece known as Eleftheria Stergios. No mention was made of testator's intention to provide for or not to provide for children or afterborn children (R. 44).

During the year 1956, the Appellee and her husband discussed adopting a child (R. 32-33). Proceedings were instituted and completed in the Court of the First Instance of Heracleon, Island of Crete, Kingdom of Greece, whereby Appellant's ward, Constantine Neonakis, a minor child residing in and a citizen of Greece was adopted by Nick Stergios (R. 33). The Trial Court found that the adoption took place in accordance with Greek law and with the consent of Appellee (R. 36). The adoption took effect on February 22, 1958, the date of the decree of the Greek Court (R. 33).

Shortly after the adoption Nick Stergios became ill and died on August 20, 1958. The minor child, who was the son of a niece of Nick Stergios, was never brought to this country (R. 32-33).

The Will of Nick Stergios, dated October 20, 1954, was probated as Number 22041 Probate in Woodbury County, Iowa (R. 8). The minor child was not listed in the probate proceedings as a beneficiary and notice was not given to the minor or any legal representative of any probate proceedings. The estate was closed on March 26, 1959. No distribution was made to Appellant's ward (R. 34).

On February 15, 1961, Stanley M. Corbett, an attorney, was appointed Guardian of Constantine Neonákis, a minor. Shortly thereafter suit was commenced by the Guardian, Appellant herein, to reopen the estate, set aside the Final Report, and to recover for the minor ward two-thirds of the Estate of Nick Stergios (R. 44).

Trial was held in equity without jury on July 6, 1962. It was contended in the pleadings and at the trial by Appellant that Apellant's ward was entitled to two-thirds of the estate by virtue of Section 633.13, Code of Iowa, 1958. That section provides in substance that when a testator shall have a child born after the making of a Will and shall die leaving such child neither provided for or mentioned in the Will, such child shall inherit from the deceased parent as though no Will had been made. A child's intestate share of his parent's estate in Iowa is two-thirds of the estate (R. 33-34).

At the trial, as part of Appellant's case, Appellant contended that Section 567.8, Code of Iowa, 1958, was

nullified by virtue of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece. Appellant, as part of Appellant's case, asked the Court to take judicial notice of the Treaty and offered into evidence a copy of the Greek Treaty as Plaintiff-Appellant's Exhibit "5". This Treaty was offered and received in evidence for the purpose of showing that Section 567.8, Code of Iowa, 1958, was repugnant thereto and to establish the nullification of the Iowa Statute (R. 21-22).

Section 567.8, Code of Iowa, 1958, set out in full in Appendix A, provides in essence that nonresident aliens may not take title to real property in Iowa unless the nonresident alien can prove the existence of reciprocal rights of succession given to United States citizens to inherit real estate in the foreign country. Here, therefore, under the provisions of Section 567.8, Appellant must prove that Greece gives United States citizens the right to inherit real estate in Greece before Appellant's ward could inherit Iowa real estate.

Appellant contended at the time of trial that Section 567.8, Code of Iowa, 1958, was nullified by the Greek Treaty, and particularly Article IX thereof. The pertinent portions of the Treaty are set out in Appendix B. Appellant contended that Article IX of the Treaty grants to nationals of either party to the Treaty, national treatment with respect to acquiring property in the territory of the other. Appellant contended that while Section 1(a) of Article IX provides that the acquisition of property by Greeks within the United States shall be dependent

upon the law of the state within which the property is located. Section 2 of Article IX provides that where a national of either country is prevented from receiving national treatment in the acquisition of property by succession because of his alienage, the foreign national shall be given five years to dispose of the property.

On October 18, 1962, the Trial Court entered its Judgment and Decree finding that a valid adoption had been effected by which Appellant's ward became the adopted child of Nick Stergios, and that the status should be recognized by the State of Iowa (R. 36). The Court did find, however, that the Treaty did not nullify Section 567.8, Code of Iowa, 1958, and that Appellant must prove the existence of reciprocal rights to succession as required by that statute. Appellant had elected to stand on the rights granted by the Treaty and did not prove the existence of the reciprocal rights. The Trial Court thereupon dismissed Appellant's Petition (R. 36-38).

Appellant thereupon appealed the ruling to the Iowa Supreme Court. By a five to four decision the Iowa Supreme Court affirmed the Trial Court. The only issue discussed or determined was the assignment of error presented by Appellant as to whether the Treaty nullified the requirements of Section 567.8, Code of Iowa, 1958. The majority found that the Treaty did not nullify the Iowa statute and Appellant still had the burden of proving the existence of reciprocal rights of succession (R. 42-55).

## ARGUMENT

### I.

**Treaties entered into by the United States with foreign governments are the supreme law of the land, and insofar as state statutes are in conflict, they are suspended or invalidated.**

Article VI of the Constitution of the United States clearly provides that treaties made by the United States shall be the supreme law of the land and insofar as state statutes and common law or even constitutions are in conflict, they are suspended or invalidated.

The treaty power has been used frequently as a basis for invalidating state laws governing rights of succession to property within a state. In *Clark v. Allen*, 331 U. S. 503, decided in 1947, a California statute governing rights to succession to property in California was held to be invalidated by a treaty between the United States and Germany. This Court there noted at page 517:

> "Rights of succession to property are determined by local law. * * * Those rights may be affected by overruling federal policy, as where a treaty makes different or conflicting arrangements. * * * Then the state policy must give away."

It has long been held that treaties should be liberally construed. This Court stated in *Factor v. Laubenheimer*, 290 U. S. 276, decided in 1933 at page 293 thereof:

> "In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which

> should govern the diplomatic relations between nations, and the good faith of treaties as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. For that reason, if a treaty fairly admits of two constructions, one restricting the right which may be claimed under it, and the other enlarging it, the more liberal is to be preferred."

Furthermore, as set out by this Court in *Nielsen v. Johnson*, 279 U. S. 47, decided in 1929, since the treaty making power is independent of and superior to the legislative power of the states, the meaning of treaty provisions should not be narrowly construed by any necessity of avoiding conflict with state legislation.

Finally, in considering the construction and interpretation to be placed upon treaties, it has been stated frequently that the interpretation placed upon treaties by the United States State Department shall be given great weight. In *Kolovrat v. Oregon*, 366 U. S. 187, decided in 1961, at page 194, this Court stated:

> "While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight."

As applied to the case at bar, then, the Treaty with Greece is supreme over Iowa statutes. If Section 567.1 and Section 567.8, Code of Iowa, 1958, conflicts with the Treaty with Greece, it is to that extent nullified. In determining whether the treaty and statute conflict, the provisions of the treaty must be liberally construed and the interpretation of it by the State Department should be given great weight.

## II.

**The Treaty between the United States and Greece clearly nullifies the requirement of Iowa law that Appellant must prove the existence of reciprocal rights of succession before he may acquire property rights in Iowa.**

Disregarding for the moment the effect of the Treaty, there can be no question but that under Section 567.8, Code of Iowa, 1958, Appellant's ward may not take title to property in Iowa by succession unless Appellant proves the existence of a reciprocal right upon the part of United States citizens to take property in Greece by succession. Furthermore, the burden is on the nonresident alien to establish the fact of existence of reciprocal rights of succession. The full text of the statute is set out in Appendix A, *infra*.

The Treaty, however, is in clear conflict with the Iowa statute. The full text of the pertinent portions of the Treaty is set out in Appendix B. Section 1 of Article IX of the Treaty provides that nationals of both the United States and Greece shall be given "national treatment" to "acquire by purchase or otherwise" and with respect to "owning, leasing, occupying and using" property within the territory. Sub-section (a) and (b) of Section 1 impose restrictions on the right granted in Section 1. Subsection (a) says that the right of Greeks to acquire rights in property in the United States "shall be dependent upon the applicable laws of the States • • • within which such property is located". Sub-section (b) says that the right of United States citizens to acquire property in Greece may be restricted by Greece in certain frontier and coastal areas.

Thus, Section 1 says, in effect, that nationals of both the United States and Greece can acquire and own property in the other nation subject to certain restrictions. In the United States, the right of Greeks to acquire property shall be subject to state laws. Iowa and many other states have placed restrictions on the right of non-resident aliens to take property. Iowa Code Section 567.8 says, in effect, the Greek must be required to prove the existence of a reciprocal right to take on the part of U. S. nationals in Greece.

Highly important, however, is the provision of Section 2 of Article IX of the Treaty, which says that where the alienage of a national of a party to the Treaty has prevented a Greek or an American from receiving national treatment with respect to the right to acquire property by succession, he:

> "* * * shall be permitted freely to dispose of property within the territories of the other party * * * and they shall be permitted a term of at least five years in which to effect such disposition."

Appellant concedes that should he wish to acquire a fee simple title to the property and hold it indefinitely, he would have to prove that Greek law grants reciprocity. The burden of proof as to the existence of Greek law granting reciprocal rights would be upon Appellant and whether he fulfilled his burden of proof would be a question of fact.

To acquire the limited right granted by Section 2 of Article IX of the Treaty, however, no reciprocal rights need be proved. Indeed, it is for the reason that recipro-

cal rights often cannot be proved that the power of sale provision of Section 2 of Article IX was inserted in the Greek Treaty and similar provisions inserted in most other treaties of "Friendship, Commerce and Navigation." As Professor Willard L. Boyd has set out in his recent article in 51 Georgetown Law Review, supra, at page 473 thereof, eleven states have adopted reciprocal succession statutes, many of which are identical to Iowa's Section 567.8. In addition, power of sale provisions are frequently inserted in treaties. See "Property Rights of Aliens under Iowa and Federal Laws," 47 Iowa Law Review 104, footnote 82 on page 117. Power of sale provisions inserted in treaties must be considered as a device to avoid the necessity of proving the existence of reciprocal rights and still allowing the states to have some control over who holds property within their borders. As stated by Professor Willard L. Boyd in "Treaties Governing the Succession to Real Property by Aliens," 51 Michigan Law Review 1001 at page 1016:

> "The alien is allowed a specified period of time in which to liquidate the realty and remove the proceeds without restraint or interference from the country in which it was situated. By this method the states are left to determine their own policies concerning the holding of realty by aliens and at the same time the alien is allowed the market value of the property and forfeiture is avoided."

The Appellant asserts that he could concede that no reciprocal rights of succession exist between the United States and Greece, and still be entitled to judgment under his Petition, although the interest in real estate would terminate if not sold within five years. This is so because

it is Appellant's *alienage* which under Section 567.8 requires him to prove the existence of the reciprocal rights. Section 2 of Article IX of the Treaty says that where a party's *alienage* prevents him from receiving national treatment in *acquiring* property by succession, he shall have five years to dispose of the property. His alienage would prevent him under the restrictions of Iowa law from acquiring property. Therefore, pursuant to Section 2 of Article IX of the Treaty, he shall have five years to sell the property.

Granted a state can impose such restrictions as it will on the right of succession regardless of what the Treaty says, as long as it applies to aliens and nationals alike. Where the restrictions are placed on succession by reason of *alienage,* Section 2 of Article IX comes into play and gives the alien the limited property right regardless of state law because of the supremacy of federal treaties over state law.

This is precisely the holding of the United States Supreme Court in *Clark v. Allen,* supra, involving the interpretation of the effect of a German treaty on the California succession statute, which was nearly identical to Iowa Section 567.8. In that case the Court did find that the reciprocal succession statute was constitutional and did not invade the federal treaty power. The Court did go on to find, however, that the requirement of the California statute necessitating proof of reciprocal rights of succession was nullified by the treaty between the United States and Germany and there was no necessity for proving the existence of reciprocal rights. The Ger-

man treaty gave a three year power of sale where the alien was disqualified from taking by the laws of the country wherein the property was located. The Court stated:

> "The rights secured are in terms a right to sell within a specified time, plus a right to withdraw the proceeds and an exemption from discriminatory taxation * * * and though they are not expressed in terms of ownership or the right to inherit, that is their import and meaning * * * (Citing cases including *Ahrens v. Ahrens,* 144 Iowa 486, 489, 123 N. W. 164, 166). * * *
>
> "If, therefore, the provisions of the treaty have not been superseded or abrogated, they prevail over any requirements of California law which conflicts with them."

This Court found, therefore, the requirement of proving reciprocal succession rights to conflict with the treaty, and no proof of reciprocity was necessary. To the same effect see *Kolovrat v. Oregon,* 366 U. S. 187, decided in 1961.

The identical proposition that was decided in the case of *Clark v. Allen* is presented in the case at bar. The *Clark v. Allen* case can lead to no other conclusion than that the Appellant here need not prove the existence of reciprocal rights of succession to give him a valid claim to the estate of his adopting father as set out in Section 2 of Article IX of the treaty providing he dispose of his real property within five years.

It is difficult to understand the interpretation placed upon the Treaty provisions by the majority of the Iowa Court and urged by the Appellee. It apparently is based

upon two false conclusions. The first is that somehow the Treaty itself requires proof of reciprocal rights of succession (R. 48-49). As shown at page 42 of the Record, the majority of the Iowa Supreme Court state:

> "In the first place the provision of the Treaty which requires reciprocal rights as between nationals of the two contracting countries supersedes any other and later provisions."

The writer of the opinion then goes on to claim that Article XXIV, Section 1 of the Treaty, set out in full in Appendix B, *infra*, nullifies the provisions of Article IX, Section 2. Article XXIV of the Treaty is merely the article which sets out the definition of terms used in the Treaty. Section 1 thereof defines the term "national treatment." "National treatment" is said to mean, in effect, that a citizen of Greece must be treated no less favorably in the United States than United States nationals are treated therein. The Iowa Court emphasizes that the article states:

> "The term does not imply immunity from the laws and regulations * * * of both parties."

It is significant that in so quoting the last line of the definition of "national treatment" the opinion writer omitted the words "which apply in a nondiscriminatory manner." National treatment means, then, that the United States and the states can impose restrictions on the manner in which property may be acquired by succession, for example, providing that the restrictions do not discriminate against Greek citizens. Article XXIV, Section 1 of the Treaty, simply states that "national treatment" shall not be taken to imply immunity from laws and regulations

of a party to the treaty "which apply in a nondiscriminatory manner to nationals of both parties."

It is obvious that the section of the Treaty defining "national treatment" does not "supersede" Article IX, Section 2 of the Treaty as the majority argues (R. 48). Substituting the definition of "national treatment" for the words "national treatment" contained in Section 2 of Article IX of the Treaty would mean that the section would simply say, in effect:

> "Greeks shall be permitted to dispose of property in the United States with respect to the acquisition of which their alienage has prevented Greeks from being treated like United States citizens, and they shall be given five years to do so."

It is difficult to understand how the addition of the definition of "national treatment" to Section 2, Article IX of the Treaty can be said to nullify or supersede its provisions. Nor can Article XXIV be said to allow the enforcement of reciprocal right of succession statutes by various states of the United States. That article simply says that national treatment means that where the term is applicable Greeks must be treated like United States citizens in the United States. Section 2 of Article IX simply says that where *alienage* prevents a Greek or United States citizen from being treated like a national in acquiring property, they shall have five years to sell it. Certainly, then, it is not either one of these sections of the Treaty that require proof of reciprocal succession rights.

It is Section 567.8 of the Iowa Code which imposes the requirement on Greeks and other nonresident aliens

to prove the existence of reciprocal succession rights. As previously discussed, it is *alienage* which requires proof of reciprocal succession rights under the Iowa statute in question. Since the Greek's alienage prevents him from acquiring property in Iowa in the same manner as a United States national, i.e., from receiving "national treatment," he should have five years to sell the property pursuant to Section 2, Article IX. Far from requiring proof of reciprocal rights of succession then, the Treaty sections provide that where one of the parties to the Treaty establish some discriminatory requirement in the manner that citizens of the other party may acquire property, such as the Iowa statute, the alien citizen has five years to sell the property.

The second false conclusion of the majority of the Iowa Court is that Appellant cannot dispose of property under Section 2 of Article IX of the Treaty until he acquires it. The majority stated in the opinion (R. 48):

> "Appellant emphasizes disposal of property. He ignores the fact that before the ward can own and dispose of the property he must acquire it according to: 1. Law of Iowa. 2. Reciprocal provision of treaty. 3. By carrying the burden of proof to all facts."

There can be no quarrel with the proposition that before one can sell property, he must acquire it. However, as previously discussed, where a nonresident alien is prevented from acquiring a fee simple interest in property by reason of reciprocal succession statutes such as Iowa's Section 567.8, Article IX, Section 2 of the Treaty gives the alien a five year power of sale. The majority is cor-

rect when it finds that Appellant cannot acquire a complete fee simple interest to the real estate in question without proof of reciprocal succession rights, but incorrect when it finds that without proof of reciprocal succession rights, no property rights are given by the Treaty. Courts have frequently held that the grant of a power of sale such as given in Article IX, Section 2 of the Treaty does constitute a property right.

The Iowa Supreme Court in the case of *Doehrel v. Hillmer*, 102 Iowa 169, 71 N. W. 204 (1897), had occasion to examine this problem. There a treaty between the United States and Prussia provided that on the death of any person holding real estate within the territory of one party, if such real estate would by the law of the land descend to the subject of the other, were he not disqualified by alienage, such citizen shall be allowed a reasonable time to sell same and withdraw the proceeds. The Iowa Court found that the power of sale provided for in that treaty was more than that. An actual fee was given the alien. The Court stated:

> "Her estate in the land was that defined by Plowden as a fee simple determinable, or by Blackstone as a base or qualified fee. * * * By the terms of the treaty, the power to dispose of the land and appropriate its proceeds is granted in positive terms. Such a power to sell cannot be exercised unless the power is vested with the fee, or, in other words, the complete ownership * * *
>
> "The evident purpose was to so protect the citizens and subjects of both countries in their property interest that alienage would not effect the right of inheritance."

The Iowa Court considered a similar question in the case of *Ahrens v. Ahrens*, 144 Iowa 486, 123 N. W. 164 (1909). This case involved a treaty between the United States and Hanover, which contained the following provision:

> "Where, on the decease of any person holding real estate within the territories of one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same and to withdraw the proceeds without molestation * * *"

Under the statutes in force at the time of the *Aherns* case, a nonresident alien could not inherit title to real estate in Iowa. The Iowa Court stated:

> "The effect of the treaty was not to nullify the statute, but to suspend it in its application to a citizen of Hanover. * * * The argument at this point is that by virtue of this treaty the nonresident alienage did not disqualify them to take title to real estate. It only disqualified them to hold such title beyond a reasonable time."

The Court further considered the nature of the interest which the treaty gave to the nonresident alien.

> "Some authorities denominate a base or qualified fee, and others a determinable fee. The terminology is not of controlling importance. *That the right to sell carried with it the ownership as a necessary incident to the power of sale is held by all of the authorities.*" (Emphasis ours).

Thus again the majority of the Iowa Court was incorrect, this time in holding that Appellant acquired no property rights under the treaty unless he proved recipro-

cal succession rights. It is clear that the power of sale given him by the treaty in the event of his inability to prove reciprocal succession rights constituted property which he acquired under the treaty, independent of Iowa law.

The confusion of the majority in arriving at its conclusion is best illustrated by the following statement taken from the Opinion (R. 48):

> "The laws of the State of Iowa are not in conflict with the treaty as a matter of law, in connection with the case at bar. It is a question of fact."

It would appear that in stating whether state statutes are in conflict with federal treaties is a question of fact, the majority of the Iowa Supreme Court has enunciated a new and radical principle of constitutional law.

The opinion of the majority is obviously in error from another standpoint. If Greek claimants must prove the existence of reciprocal rights to property in Iowa and the ten other states having similar reciprocal succession statutes, and take nothing if they cannot, what right does the treaty give them? If, as the majority says, that before there can be disposal of property under Section 2, Article IX, there must be the complete fee simple interest given by proof of reciprocal rights, Section 2 is completely meaningless and grants no rights at all.

It should also be noted that Section 2 of Article IX is not a one-way street for the benefit of Greeks only. United States citizens have occasion to use the power of sale provision of Section 2. Section 1 (b) of Article IX provides that the right of U. S. citizens to acquire prop-

erty in frontier and coastal areas of Greece shall be subject to the restrictions Greece may impose on aliens to acquire property in those areas. If Greece does in fact create restrictions on aliens, the U. S. citizen claiming property in those areas would have the right to dispose of the property within five years pursuant to Section 2. This would be so because the *alienage* of the U. S. citizen prevented him from receiving "national treatment" in Greece.

The interpretation placed on the Treaty by Appellant and the minority of the Iowa Supreme Court is in accord with the intent of the parties to the treaty, the governments of Greece and the United States. By Order of this Court dated October 12, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. In December 1964, the Solicitor filed with this Court a Memorandum for the United States. Therein, three separate lawyers acting as counsel for the United States State Department expressed the view that the Iowa Supreme Court was in error. This view was best expressed by the Memorandum of Andreas F. Lowenfeld, Acting Legal Advisor for the Secretary of State, dated October 26, 1964, found as Appendix B to the Memorandum for the United States filed in this cause. Mr. Lowenfeld stated in part:

> "It is the view of the Department of State that the intent of Article IX (1) of the Treaty * * * is to accord national treatment to Greek citizens in respect to the acquisition of real property through inheritance, subject to local laws which may limit the rights of aliens to *hold* real property. Article IX (2) sets a limitation upon this exception for state

laws prohibiting alien ownership of realty by requiring that the alien be allowed five years in which to dispose of real property he has acquired through inheritance. The Department of State is of the opinion that the treaty eliminates any necessity of proving reciprocity of treatment where the property in question is realty and thus subject to Article IX."

Based up the three opinions, the Solicitor General concludes at page 3 of his Memorandum:

"The Iowa Courts have held that State laws of inheritance may be applied so as to defeat the right of a nonresident Greek national to take by succession real and personal property located within the State. This holding depends on a construction of a treaty between the United States and Greece. That construction, in the view of both the Department of State and the Greek Government, is in error."

As discussed in Division I of the Argument portion of this Brief, treaties must be liberally construed to give effect to rights granted therein and the interpretation placed on the treaty provisions by the State Department is given great weight by the Court. See *Kolovrat v. Oregon*, supra. It is obvious that the interpretation placed upon the Treaty by the governments involved and a plain reading of the Treaty dictate a reversal of this cause.

## CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of the State of Iowa affirming the Judgment and Decree of the District Court of Iowa in and

for Woodbury County, sustaining the validity of Section 567.1 and Section 567.8, Code of Iowa, 1958, should be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Respectfully submitted,

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## APPENDIX A

Section 567.1, Code of Iowa, 1958.
Section 567.8, Code of Iowa, 1958.

"567.1 ACQUISITION OF REAL ESTATE. Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

"The widow and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

"Nothing in this section contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

"This chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings for forfeiture have been commenced."

"567.8 ALIENS' INHERITANCES. 1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens

of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents.

"2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

"3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property."

## APPENDIX B

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece.

The United States of America and the Kingdom of Greece, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of promoting their economic development and the general welfare of their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements which facilitate and encourage, on bases mutually advantageous, the flow of investment capital and

of technology and the further development of productive enterprise and commercial intercourse, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

The Honorable John E. Peurifoy, Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece,

and

His Majesty the King of the Helfenes:

His Excellency Sophocles Venizelos, Prime Minister and Minister of Foreign Affairs,

who having communicated to each other their full powers found in good and due form, have agreed upon the following articles:

Article VIII.

Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, art or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology needed for economic development.

Article IX.

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to acquiring by purchase or otherwise and with respect to owning, leasing, occupying and using land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, philanthropic and professional activities, and for residential and mortuary purposes, subject to the following limitations:

(a) in the case of nationals and companies of Greece the acquisition by purchase, or otherwise, of ownership rights in land, buildings, and other immovable property, within the territories of the United States, shall be dependent upon the applicable laws of the States, Territories and possessions of the United States of America within which such property is located; and

(b) in the case of nationals and companies of the United States of America the right to acquire by purchase, or otherwise, and the right to lease, occupy and use land, buildings, and other immovable property, within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the right of aliens to acquire by purchase, or otherwise, and to lease, occupy and use such property in specific frontier and coastal areas.

2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treat-

ment, and they shall be permitted a term of at least five years in which to effect such disposition.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds.

## Article XXIV.

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
MAR 22 1965
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# In the Supreme Court of the United States

Term, 1965
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## APPELLEE'S BRIEF

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STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

---

**Appeal from the Supreme Court of the State of Iowa**

---

## APPELLEE'S BRIEF

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## OPINION BELOW

The Opinion and Judgment of the Supreme Court of Iowa affirming the decision of the Trial Court dismissing Appellant's Petition appears as *Corbett v. Stergios*, ___ Iowa ___, 126 N. W. 2d 342 (1964) (R. 42-55).

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## JURISDICTION

The Opinion and Judgment of the Court below, (R. 42-55) was entered on February 11, 1964. Notice of Appeal to the Supreme Court of the United States was filed on April 23, 1964 (R. 56-57). On January 18, 1965, the Supreme Court of the United States entered an Order noting probable jurisdiction and placing this case on the summary calendar (R. 58).

---

## QUESTION PRESENTED

Whether the Treaty of Friendship and Commerce between the United States and Greece nullifies the requirement of Section 567.8, Code of Iowa, 1958, that appellant non-resident Greek alien must prove the existence of reciprocal rights of succession before he may acquire an interest in Iowa real estate by intestate succession from his adopting father.

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## STATEMENT OF THE CASE

Appellant's brief adequately states the case herein involved with the following additions. The trial court in its determination concluded that the judgment of the Greek Court in adopting the child is conclusive on this Court; no fraud having been shown in its procurement. The trial court further found that the Plaintiff had not carried the burden imposed by Section 567.8 of the Iowa Code which places the burden in each instance upon the non-resident alien to establish the fact of existence of the

reciprocal rights referred to in the statute (R. 35-38). The Iowa Supreme Court affirmed this ruling of the trial court.

The trial court found under Greek law that the adopting parent did not have inheritance rights over the adopting child. The Iowa Supreme Court ruled that the decision of the trial court was also based upon the fact that the adoptive parent under Greek civil law does not have any inheritance rights over the adoptive child and is contrary to the status of the adoptive parent in Iowa under Section 600.6, Code of Iowa.

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## ARGUMENT

### I.

**The treaty between the United States and Greece does not nullify the requirement of Iowa law that the appellant must prove the existence of reciprocal rights of succession or testamentary disposition before he may acquire property rights in Iowa.**

Section I of Article IX of the treaty provides for "national treatment" in "acquiring by purchase or otherwise, and with respect to owning, leasing, occupying and using" real property, subject to certain limitations. The pertinent portions of the treaty are set out in Appendix A, Infra.

It is admitted by the appellant and the United States that this section includes the acquisition of real property by inheritance. Sub-sections (a) and (b) permit specific

rights of acquisition of real property by the respective foreign national. The words of Sub-section (a) provide specifically that the acquisition by purchase or otherwise by a Greek national shall be dependent upon applicable laws of the States. It is the acquisition of the real property that is dependent upon state law, not the mere holding.

This interpretation of the word "acquire" in Sub-section (a) is further supported by the use of the word in Sub-section (b). Under Sub-section (b) restrictions which Greece may place are spelled out as restrictions on the right to acquire real property by purchase or otherwise, and restrictions which may be placed on the right to lease, occupy and use such property in specific frontier and coastal areas. It is obvious from this that the restrictions which may be imposed are much broader than those limited to the *holding* of the real property. Reading Sub-sections (a) and (b) together, it is obvious that the two sub-sections are similar, and that it could not be intended to allow Greece greater authority to restrict the acquisition of real property than would be granted the States of the United States.

The effect of Section (1) is to permit nationals of the United States and Greece to acquire real property subject to certain state laws in the United States and certain restrictions imposed by the laws of Greece. The limitations imposed by Iowa law includes 567.1 and 567.8. The full text of these statutes are set out in Appendix B. Section 567.1 limits the holding of real estate by inheritance by non-resident aliens to a period of twenty years. Section 567.8 limits the acquisition of such property to

non-resident aliens of foreign countries granting to reciprocal rights of inheritance to United States citizens.

The appellant confuses the right to acquire real property under Section (1) of the treaty in the ways specified with its disposal under Section (2) when the same is inherited.

Section (1) provides that a Greek national can purchase real estate the same as any citizen of Iowa subject to the laws of Iowa. The Greek national can also acquire real estate by inheritance, but again subject to the laws of Iowa as to the right to inherit. This right of inheritance is based on the condition of reciprocity of rights as to inheritance between the United States and Greece. Appellant concedes that should he, as a Greek national, wish to acquire a fee simple interest by inheritance, he would have to prove that the Greek law grants reciprocity. (Appellant's brief, page 10). The United States Government, in their brief introduces evidence that on March 20, 1945, there existed reciprocal rights of inheritance between the United States and Greece and the State Department is fully satisfied that reciprocal rights of inheritance exist under the laws of Greece. Appellee wishes to draw to the attention of this Court that Abram Chayes, the then legal advisor of the State Department, did not testify before the trial court in this matter. (Memorandum of the United States Government, Appendix A).

Section (2) grants the right to the alien to *hold* real property acquired by inheritance for at least 5 years regardless of any state law to the contrary. Section (2) is not applicable in this case as the Iowa statute provides a period of at least 20 years.

It could not be more apparent to the interpretation of this treaty that its drafters in 1951 recognized that under Section (1), the state laws of inheritance in Iowa did require reciprocal inheritance rights between nationals. Section (1) specifically states that the rights accorded the nationals within the territories of the other party in regard to real estate acquired by purchase or inheritance was subject to limitations in Sub-sections (a) and (b). If the same be dependent upon the applicable laws of the state and that law limits the foreign national, then it is recognized under this treaty. If laws imposing such limitations are abrogated by the treaty, then there are in fact no limitations which are evident under Sub-sections (a) and (b) and the supposed limitations are meaningless.

Article XXIV defines "national treatment". In essence, it means equal treatment in one country for the nationals of the other country. In the United States, Greek nationals are treated like United States citizens. In Greece, United States nationals are treated as are Greek citizens.

Section (1) of Article IX provides for national treatment in the United States of Greek citizens and for national treatment in Greece of United States citizens. This treatment which applies to the *acquisition* of real property is by the Treaty subject to the limitations of Subsections (a) and (b), the laws of the states and of Greece. These laws include "reciprocal statutes" which at the time the Treaty was enacted were in effect in several states, and which specifically apply to the acquisition of real property by the foreign national (non-resident alien). In addition, many states had laws limiting the period for

*holding* real property once it was acquired by inheritance. Our State Department in negotiating the treaty took into consideration these state laws and did intend to make clear that the limitations of these laws applied to acquisition of real property by the Greek national.

Section (2) of Article IX, refers to the disposal of property acquired by inheritance. This property has already been acquired by inheritance, but because of the limitations of this section, it may be held only for a limited period in some states. Section (2) provides for a minimum period of 5 years for disposing of real property already acquired. If nothing has been acquired, there is nothing to dispose.

The Treaty by its preamble emphasizes that it is based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally recorded. The Treaty recognizes the importance of reciprocity, and to allow recognition of rights where there is no reciprocity would be to negate the purpose of the Treaty.

The treaty sets out to accord to each of the parties certain specified rights with definite limitations. Article IX does not apply the most-favored nation treatment as this article is definite and restrictive and specifically sets out the limitations.

National treatment is provided in Article IX, but with limitations. The limitations include those which may be imposed by local law of the respective countries. The limitations are set out in Sub-sections (a) and (b). In effect the Treaty recognizes there may be instances where

treatment of an alien under local law may be different from treatment of a citizen. If this be the case, there is an exception to treatment reciprocally accorded. In this instance, local statutes on reciprocity apply. If in fact reciprocity is shown, the alien inherits and acquires the real property, subject to local laws of disposition and Article IX, Section (2) of the Treaty. If it is not shown, he cannot inherit.

By the Treaty, Greece may impose restrictions upon the acquisition of real property. Since Greece can impose restrictions, limiting reciprocity under Article IX, the burden is upon the alien to show there are reciprocal rights before he can receive national treatment in the acquisition of real property. Once shown, the spirit of the Treaty is fulfilled.

## II.

**Rights to property inherited in Iowa are determined by the laws of Iowa.**

In the United States inheritance rights are granted under state law, but the rights may be affected by overriding federal policy, as where a treaty makes a different arrangement. *Clark v. Allen*, 331, U. S. 503 (1947). The Treaty under consideration does not grant rights of inheritance, but in fact recognizes the state laws of inheritance and subject thereto.

The citizen of Iowa can inherit property in Iowa only if he is granted this right by the Iowa law. A Nebraska citizen or any other state citizen would be subject to the Iowa law of inheritance. Also a foreign national residing

in a foreign country. All must establish the right to inherit under Iowa law before such property can be acquired.

The appellant claims his right to inherit herein under Section 600.6, Code of Iowa. This section of the Code provides:

> "Upon the entering of such decree, the rights, duties, and relationship between the child and parent by adoption shall be the same that exist between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and child born in lawful wedlock."

The rights of the adopted child are those determined by Iowa law. If the Iowa law grants the right to inherit, the child may inherit. Otherwise, it may not.

It is submitted that implicit in the Iowa court's decision is the recognition that rights following from the adoption shall not be recognized if the law under which the adoption is granted differ with laws and policies of this state. In the opinion of the Supreme Court of Iowa, it is stated as follows (R. 52).

> "VIII. The decision of the trial court was also based upon the fact that there is a lack of reciprocity as follows: In Iowa there appears in Section 600.6, Code of Iowa, the following provision: 'Status of the adopted child. Upon the entering of such decree, the rights, duties and relationships between the child and parent by adoption shall be the same that exists between parents and child by lawful birth and the right of inheritance from each other shall be the same as between parent and children born in lawful wedlock.'
>
> "A duly verified copy of the Greek civil law pertaining to adoption was offered in evidence. A portion of Article 1643 of Chapter 13, pertaining to adoption

provides as follows: 'The adoptive parent does not have any inheritance rights over the adopted child.'

"This is not reciprocity as between the citizens and nationals of the two countries. The provisions are contrary to each other."

Herein it is implied that inheritance laws which place an adopted child in a different relationship with his adopted parent from those established in Iowa are repugnant to our laws and policies and shall not be recognized. Previously the Iowa Supreme Court has stated principle more fully in *Cook v. The Estate of Todd*, 249 Iowa 1277, 90 N. W. 2d 23 (1958) as follows:

"It is generally held that the status of adoption created by the law of a state having jurisdiction to create it will be recognized by the courts of another state to such extent at least as is not inconsistent with the laws or policies of the latter state."

It is submitted that this principle is followed in other states of the Union. This important principle is enunciated most effectively *In Re Gillies' Estate*, 83 A. 2d 899 (1951), wherein the court states as follows:

"The weight of authority in this country is that a child adopted in a foreign state or country may take under local statutes of descent and distribution, if such foreign state or country had jurisdiction to fix his status with respect to his adoptive parents, but this rule of international comity is subject to the condition that the law, with regard to adoption, of the state in which the real and personal property is situated, does not differ essentially from the laws of the state in which the adoption was had, so that local public policy is not violated by recognizing and giving effect to the adoption proceedings of the foreign state or country. * * * *"

It is important that in determining the effect of an adoption under a law other than the local law, two things must be determined: First, whether the adoption is effective under the foreign law so as to be given recognition under the local law; and second, the rights to be granted under local law be so recognized. In this case the Iowa Court recognized that there had been a valid adoption under the laws of Greece (R. 35, 36). However, the rights to be granted by such recognition are determined by Iowa law. In cases involving rights of inheritance, an adopted child cannot inherit in Iowa if the adoptive parent cannot. The Iowa Supreme Court herein makes this the Iowa law.

This determination is one separate and apart from the question of alienage, since the adopted child is not denied any rights because of its alienage. It is denied inheritance rights because the laws creating the status are different from those of Iowa, and the public policy behind our inheritance laws is not to give effect for purposes of inheritance to such a status. For an adopted child to inherit in Iowa, it would be necessary for the child to be adopted under laws not inconsistent with the policy of our laws.

## CONCLUSION

The judgment of the Supreme Court of the State of Iowa affirming the Judgment and Decree of the District Court of Iowa in and for Woodbury County should be affirmed:

(1) Interpretation placed on treaty is a proper one.

(2) Under Iowa law the inheritance rights acquired by the adoption in Greece did not include the right to inherit from the adoptive parent.

Respectfully submitted,

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March, 1965

## APPENDIX A

Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Greece.

The United States of America and the Kingdom of Greece, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of promoting their economic development and the general welfare of their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements which facilitate and encourage, on bases mutually advantageous, the flow of investment capital and of technology and the further development of productive enterprise and commercial intercourse, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of unconditional most-favored-nation treatment reciprocally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

The Honorable John E. Peurifoy, Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece,

and

His Majesty the King of the Helfenes:

His Excellency Sophocles Venizelos, Prime Minister and Minister of Foreign Affairs,

who having communicated to each other their full powers found in good and due form, have agreed upon the following articles:

Article VIII.

Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, art or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology needed for economic development.

Article IX.

1. Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to acquiring by purchase or otherwise and with respect to owning, leasing, occupying and using land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, philanthropic and professional activities, and for residential and mortuary purposes, subject to the following limitations:

(a) in the case of nationals and companies of Greece the acquisition by purchase, or otherwise, of ownership rights in land, buildings, and other immovable property, within the territories of the United States, shall be dependent upon the applicable laws of the States, Territories and possessions of the United States of America within which such property is located; and

(b) in the case of nationals and companies of the United States of America the right to acquire by

purchase, or otherwise, and the right to lease, occupy and use land, buildings, and other immovable property, within the territories of Greece, shall be subject to restrictions which Greece may consider it necessary to impose on the right of aliens to acquire by purchase, or otherwise, and to lease, occupy and use such property in specific frontier and coastal areas.

2. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

3. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment with respect to disposing of property of all kinds.

Article XXIV.

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party. The term does not imply immunity from the laws and regulations of a Party which apply in a non-discriminatory manner to nationals, companies, products, vessels, or other objects, as the case may be, of both Parties.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon

terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country.

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## APPENDIX B

Section 567.1, Code of Iowa, 1962.

Section 567.8, Code of Iowa, 1962.

"567.1 ACQUISITION OF REAL ESTATE. Nonresident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

"The widow and heirs and devisees, being nonresident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

"Nothing in this section contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

"This chapter shall not affect the distribution of personal property, and shall apply to real estate here-

tofore devised or descended when no proceedings for forfeiture have been commenced."

"567.8 ALIENS' INHERITANCES. 1. The right of aliens not residing within the United States or its territories to take real property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents.

"2. The burden shall be upon such nonresident aliens to establish the fact of existence of the reciprocal right set forth in subsection 1.

"3. If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property."

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# In the Supreme Court of the United States

October Term, 1964
No. 179

STANLEY M. CORBETT, GUARDIAN OF THE PROPERTY OF CONSTANTINE NEONAKIS, A MINOR,

*Appellant,*

vs.

VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

Appeal from the Supreme Court of the State of Iowa

## APPELLANT'S REPLY BRIEF

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*Appellant,*

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VIOLA STERGIOS, a/k/a VIOLA STERYIAKIS,

*Appellee.*

**Appeal from the Supreme Court of the State of Iowa**

## APPELLANT'S REPLY BRIEF

## STATEMENT OF THE CASE

Appellant has no argument with the addition to the Statement of the Case contained in paragraph one of Appellee's Statement of the Case. However, for all of the reasons contained in Division II of this Reply Brief Appellant states that the addition contained in paragraph two of Appellee's Statement of the Case is incorrect and improper.

## ARGUMENT

### I.

**Appellee contends that, notwithstanding the Treaty, Appellant must prove the existence of reciprocal rights of succession before he may acquire any property rights in Iowa.**

Appellee's argument in Division I of her Brief is that the Treaty between the United States and Greece allows state law to restrict the acquisition of property by Greek nationals. Appellee argues Article IX, Section 1(a) of the Treaty states that the right of Greeks to acquire property rights in the United States is dependent on state law. Iowa law says that nonresident Greek aliens can take title to real estate in Iowa only by showing the existence of a reciprocal right of succession granted by Greece to United States nationals. Since Appellant didn't prove the existence of reciprocal rights of succession as required by the Iowa law he takes nothing, Appellee argues.

If Article IX of the Treaty contained only Sections 1(a) and 1(b), Appellee's interpretation and position would be irrefutable. Unfortunately for Appellee, however, the Treaty does not end there. Article IX, Section 2, provides as follows:

> "Nationals and companies of either party shall be permitted freely to dispose of property within the territories of the other party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition."

Appellant contends that this clearly means that the Treaty recognizes the right of states to restrict the right of Greeks to acquire property. However, in the event a state does so, Section 2 gives the alien the right to dispose of the property within five years. This is also the view of the Solicitor General of the United States. (See page 5 of the Memorandum for the United States dated December 1964 and filed in this cause by order of the Court dated October 12, 1964.)

Appellee contends, however, in Division I of her Brief that all Section 2 means is that the alien is given the right to *hold* property for five years regardless of state law to the contrary. Appellee says that Section 2 of the Treaty grants no right to *acquire* property where states restrict the right of aliens to acquire property, such as in Iowa. Appellee says that Section 2 refers only to property that has "already been acquired."

What Appellee ignores, however, is the plain language of Section 2 which allows the alien to dispose of property "with respect to the *acquisition* of which * * * alienage has prevented * * * (a national) from receiving national treatment * * *." (Emphasis ours.) It is Appellant's ward's *alienage* that requires him to prove the existence of reciprocal rights of succession under Section 567.8, Code of Iowa, 1962. By failing to prove reciprocal succession rights as required by the Iowa statute, his *alienage* has prevented him from having the same inheritance rights that a United States citizen would have in Iowa, i. e., from receiving national treatment. His *alienage* has prevented him from receiving national treatment in

*acquiring* property so he can dispose of it within five years as allowed by Section 2.

Appellee's statement that Section 2 refers only to property that has "already been acquired by inheritance," leaves unexplained how it was "already acquired." If the heir proved the existence of reciprocal rights of succession he would not need to dispose of the property as provided by Section 2. Under appellee's theory if he can't or doesn't prove the existence of reciprocal rights he acquires nothing for disposal. So, how the alien acquires the property that has "already been acquired" for disposal under Section 2 of the Treaty remains a mystery.

It is apparent that Appellee's interpretation of the provisions of Article I of the Treaty in general and Section 2 thereof, in particular, would make them absolutely meaningless. If even under the provisions of the Treaty a Greek must prove the existence of reciprocal rights to acquire any property rights, the Treaty gives him nothing. He could acquire the same rights under the Iowa law without the aid of the Treaty.

Appellee argues that in negotiating the Treaty the State Department took into consideration the reciprocal succession statutes and intended to make it clear that the limitations of these laws applied to the acquisition of real property by the Greek national. This undocumented statement is completely without foundation and completely contrary to the facts. In a memo to the Ambassador of Greece by Abram Chayes, the Legal Advisor for the Secretary of State, dated July 30, 1963 (See page 9, Memorandum for the United States dated December 1964, filed in this cause) it was stated:

> "The Treaty eliminates any necessity for proving reciprocity of treatment where the property in question is realty and thus subject to Article IX."

It is apparent that the State Department was cognizant of the reciprocal succession statutes, but instead of allowing them to operate in full force, it was decided to strike a compromise. Section 1(a) of the Treaty allows states to impose restrictions on the right of aliens to acquire property within their borders. Section 2, however, prevents an alien's rights from being completely forfeited by allowing him to acquire limited property rights and to sell the property and withdraw the proceeds. The allowance of the right to states to restrict alien's inheritance rights as set out in Section 1(a) of the Treaty are not meaningless, as argued by Appellee at page 6 of her Brief. Where reciprocal rights cannot be shown the states policies are recognized in that the alien can only hold the property for five years, and the alien is allowed the market value of his property.

At the bottom of page 5 of Appellee's Brief, Appellee makes the rather startling suggestion that Section 2 of the Treaty, giving a five year power of sale, is not applicable to this case because of Section 567.1, Code of Iowa, 1962, which is set out in full in Appendix A to Appellant's Brief. Appellee says the five year power of sale granted in Section 2 of the Treaty is not applicable because Section 567.1 gives a twenty year holding period and time within which sale can be made, without any burden of proving reciprocal rights. This is the first time Appellee has advanced this proposition, but if she is serious in her contention that Appellant falls within the

operation of Section 567.1, then there is no duty on Appellant to prove reciprocal rights at all and he has twenty years to sell the property or within which to become a resident of Iowa. Appellee erroneously claims the applicability of Section 567.1, however, since this section was adopted as law in Iowa in 1868 (R. 45). The Iowa Supreme Court held in its decision in this case that Section 567.8, which was adopted in 1954, controls the case and supersedes Section 567.1 (R. 49). Consequently, this attempt by Appellee to establish that Section 2 of the Treaty is inapplicable fails too.

It should be noted that no attempt was made by Appellee in her Brief to document by case authority or otherwise her position that the Treaty did not nullify the Iowa statute. Nor was any attempt made to distinguish or challenge the logic of the case of *Clark v. Allen*, 331 U. S. 503 (1947), which held that a treaty giving a three year power of sale to nonresident aliens invalidated a California statute almost identical to Iowa's. Nor was any attempt to discredit the two Iowa authorities, *Doehrel v. Hillmer*, 102 Iowa 169, 71 N. W. 204 (1897), and *Ahrens v. Ahrens*, 144 Iowa 486, 123 N. W. 164 (1909). These cases held that where a treaty gave a right of sale to an alien in the event his alienage prevented him from acquiring property by succession, the right to sell carried with it the necessary "ownership" to sell the property. Finally no attempt was made to refute, and indeed it cannot be, Appellant's contention that the State Department's interpretation that the Treaty eliminates the necessity of proving the existence of reciprocal succession rights, should be given great weight by the Court.

Appellee's argument that the Treaty does not invalidate the Iowa statute falls into the same errors as the Iowa Court and does not stand up under close analysis.

## II.

**Appellee erroneously argues that the Iowa Court found that the adoption should not be recognized by the State of Iowa for public policy reasons.**

Appellee argues in Division II of her Brief that inheritance rights in the United States are determined under state law and that here Appellant must establish his inheritance rights under Iowa law. (See Appellee's Brief pages 8 and 9.) Appellee states also that, in determining the effect of an adoption under a law other than local law, it must be shown that the adoption was effective under the foreign law. Second, the law of the jurisdiction creating the status of adoption must not be so repugnant to Iowa law that the Iowa Court refuses to recognize the status as being contrary to Iowa public policy. Appellee goes on to state that the Iowa law set out in Section 600.6, Code of Iowa, provides that the inheritance rights between adopted child and adopting parents is the same as between parent and child born in lawful wedlock. Greek law provides that the adoptive parent does not have any inheritance rights over the adopted child.

To this extent Appellee correctly states the law and the holding of the Trial Court, the District Court of Iowa, in and for Woodbury County. Appellee then erroneously claims that the Iowa Supreme Court held that the adoption status of Appellant's ward was created under law so contrary to Iowa law that it should not be recognized.

The Trial Court found just the opposite in its Findings of Fact and Conclusions of Law (R. 32-38) and these findings were not disturbed by the Supreme Court of Iowa in its opinion (R. 42-55). The excerpt from the opinion of the Iowa Supreme Court set out on pages 9 and 10 of Appellee's Brief is taken completely out of context and certainly does not state that Iowa shall refuse to recognize the status of adoption for public policy reasons.

The Trial Court stated:

> "The ultimate issue in this case, then, is whether the minor, Constantine Neonakis, is entitled to share in the estate of the decedent, Nick Stergios, despite the provisions of the decedent's will.
>
> "Preliminary to the decision of that issue is the question of whether the judgment of adoption issued by the Greek Court is recognized as valid. If it is to be so recognized, the question of whether the plaintiff is entitled to share in the estate in view of the limitations imposed by Section 567.8 of the 1962 Code of Iowa must be decided." (R. 34).

The Trial Court then went on to find:

> "It is generally held that the status created by an adoption in a state having jurisdiction to create it, will be recognized by the courts of another state to the extent, at least, as is not inconsistent with the laws and policy of the latter." (R. 34).

After having examined the evidence on the first question as to whether the adoption should be recognized as valid, the Trial Court concluded:

> "• • • The judgment of the Greek Court adopting the child to Nick Stergios is conclusive upon this Court, no fraud having been shown in its procurement." (R. 36).

The Court having found for the Appellant that a valid adoption existed which would be recognized by the Iowa Court, then proceeded to discuss the second question, i. e., whether Appellant is entitled to share in the estate in view of the limitations of Section 567.8, Code of Iowa. The Trial Court concluded after reviewing the Treaty and the statute that Appellant must still prove the existence of reciprocal rights. At pages 37 and 38 of the Record the Trial Court states that Appellant did not carry the burden of proof imposed by Section 567.8 and could not indulge in the presumption that such reciprocal rights do exist. The Court went on to state:

> "Additionally, some affirmative evidence on the part of the plaintiff was introduced tending to show that such reciprocal rights may not in fact exist. (Exhibit No. "7", Interrogatory and Answer No. 36)." (R. 38).

Interrogatory and Answer No. 36 is set out in the Record at page 17, and is as follows:

> "36. Under Greek law does the adopting parent have any inheritance rights over the adopted child? A. No."

Thus it is apparent that the Trial Court was relying upon the differences between Section 600.6 of the Iowa Code and the Greek Adoption Code only as evidence of the lack of reciprocal inheritance rights as defined in Section 567.8. The difference in the two laws was not discussed by the Trial Court to show that the status of adoption should not be recognized for public policy reasons. The Court had already determined this question adversely to Appellee before it discussed the statutes relied upon by Appellee.

Appellee did not cross-appeal from the Trial Court's finding and ruling. It is apparent that the portion of the opinion of the Iowa Supreme Court quoted by Appellee on pages 9 and 10 of Appellee's Brief discusses the conflict between Section 600.6 of the Iowa Code and the Greek Adoption Code only on the issue of whether Appellant had proved the existence of reciprocal rights to succession as required by Section 567.8, Code of Iowa. Twice within the portion of the opinion referred to by Appellee, the Court states that there is no "reciprocity." Furthermore, the Iowa Supreme Court indicates that it is merely affirming the decision of the Trial Court. Not once does either the Trial Court or the Supreme Court of Iowa ever state that the status of adoption will not be recognized for public policy reasons. It is clear that the only basis found by the Trial Court and the Iowa Supreme Court for dismissing Appellant's claim was Appellant's failure to prove the existence of reciprocal succession rights.

It should be noted too that the argument advanced by Appellee in Division II of Appellee's Brief is not the question presented by the appeal as set out in Appellant's Notice of Appeal (R. 57), in the Jurisdictional Statement at page 5 thereof, nor in Appellant's Brief at page 3. Consequently, since Appellee did not designate another issue, Rule 15, Section 1(c)(1) and Rule 40, Section 1(d)(2) of the Revised Rules of the Supreme Court of the United States would appear to exclude Appellee's discussion of this issue.

Finally, on page 11 of her Brief, Appellee claims that an adopted child cannot inherit in Iowa if the adoptive parent cannot and that the Iowa Supreme Court's

opinion in this cause makes this the Iowa law. For all of the reasons set out in previous paragraphs of Division II of this Reply Brief, it is again submitted that this point was not even discussed by the Trial Court or the Iowa Supreme Court. Moreover, to reach such a result it would be necessary for the Iowa Supreme Court to have at least partially nullified Section 600.6 of the Code of Iowa. This section provides that the inheritance rights between adopted child and adoptive parents shall be the same as between natural born child and parent. It is submitted that if the Iowa Court intended to reach the result claimed by Appellee, it would certainly have been more explicit in doing so.

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## CONCLUSION

For the foregoing reasons, the Judgment of the Supreme Court of the State of Iowa affirming the Judgment and Decree of the District Court of Iowa, in and for Woodbury County, sustaining the validity of Section 567.1 and Section 567.8, Code of Iowa, 1958, should be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Respectfully submitted,

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